



Beschwerde zum Datenschutz

Hinweise zum Ausfüllen und Versand

Bitte füllen Sie das Formular möglichst präzise aus. Das ausgefüllte Formular mit Kopien aller relevanten Dokumente senden Sie bitte an:

- LDI NRW, Kavalleriestraße 2 – 4, 40213 Düsseldorf
- Telefax 0211 38424 999
- poststelle@ldi.nrw.de

Wenn Sie sicher sein wollen, dass Ihre E-Mail auf dem Weg zu uns ungelesen bleibt, verschlüsseln Sie Ihre Nachricht. Dazu können Sie unseren öffentlichen PGP-Schlüssel verwenden:

https://www.ldi.nrw.de/metanavi_Kontakt/key_ldi.asc.

Der dazugehörige Fingerprint lautet: EA14 18FA B79C A892 B172 850D 5C01 04F6 43DF 6F2E

Je nach Sachverhalt und Umfang der Unterlagen werden Sie per Post oder E-Mail über den Fortgang Ihrer Beschwerde informiert.

Sollten Sie eine Benachrichtigung per E-Mail ausschließlich in verschlüsselter Form (PGP) wünschen, senden Sie uns bitte den unter „Angaben zu Ihrer Person“ mitzuteilenden öffentlichen Schlüssel zusammen mit diesem Formular auch an poststelle@ldi.nrw.de.

Angaben zu Ihrer Person

Name, Vorname

Edward HASBROUCK

Straße und Hausnummer

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Telefon

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edward@hasbrouck.org

Öffentlicher Schlüssel für den Versand verschlüsselter E-Mails (PGP)

Gegen wen richtet sich die Beschwerde?

Name – Bitte geben Sie bei Unternehmen die vollständige Bezeichnung an.

Deutsche Telekom AG

Straße und Hausnummer

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Postleitzahl und Ort

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Telefon

+49 228 181 88880

Telefax

E-Mail-Adresse

datenschutz@telekom.de

Webseite

<https://www.telekom.com>

Zur Aufklärung des Beschwerdesachverhalts ist in der Regel die Nennung Ihrer Identität gegenüber der verantwortlichen Stelle erforderlich.

Sind Sie damit einverstanden? Bitte treffen Sie eine Auswahl.

- Nicht einverstanden**
Wir werden Ihre Identität nicht mitteilen. Bitte beachten Sie: Im Einzelfall ist ein Rückschluss auf Ihre Identität allein aufgrund des Sachverhalts nicht auszuschließen. Bei Beschwerden mit persönlichem Bezug ist eine Bearbeitung ohne Einverständnis in der Regel nicht möglich.
- Einverstanden**
Wir werden Ihre Identität mitteilen, falls dies erforderlich sein sollte.

Zuständigkeit

Wir helfen Ihnen gerne, sind aber nicht immer sachlich zuständig. Dürfen wir in diesem Fall Ihre Beschwerde an die sachlich zuständige Stelle weiterleiten? Bitte treffen Sie eine Auswahl.

- Nicht einverstanden**
Wir werden Sie darüber informieren, dass uns eine weitere inhaltliche Bearbeitung Ihrer Beschwerde nicht möglich ist.
- Einverstanden**
Wir werden Ihre Beschwerde an die sachlich zuständige Stelle weiterleiten und Sie darüber informieren.

Beschwerdesachverhalt

Bitte beschreiben Sie den Sachverhalt möglichst präzise unter Beachtung der folgenden Fragen.

Bitte fügen Sie Kopien aller Dokumente bei, die für Ihre Eingabe von Bedeutung sind sowie den bis dahin erfolgten Schriftverkehr mit der verantwortlichen Stelle und anderen Stellen.

1. **Welche Handlung oder Unterlassung ist Gegenstand der Beschwerde?** Beispiel: Ihrem Anspruch auf Auskunft, Berichtigung, Sperrung oder Löschung von Daten wurde nicht nachgegangen, Dritte haben unrechtmäßig Kenntnis Ihrer Daten erhalten.
2. **Welche Daten sind betroffen?** Beispiel: Anschriften, Telefonnummern, Bankdaten, Fotos
3. **Wann erfolgte die Rechtsverletzung?** Wenn möglich bitte Datum und Uhrzeit angeben.
4. **In welchem Bezug stehen Sie zu der Stelle oder Person, gegen die sich Ihre Beschwerde richtet?** Beispiel: Kundenverhältnis, (ehemaliges) Arbeits- bzw. Bewerbungsverhältnis, unerwünschte Werbung
5. **Was haben Sie bereits unternommen?** Haben Sie sich bereits an den Beschwerdegegner und/oder parallel an andere Behörden oder Gerichte gewandt? Beispiel: Datenschutzbeauftragter des Beschwerdegegners, Polizei, Staatsanwaltschaft, Gericht

I apologize that I do not understand German, and request your consideration of this complaint in English.

My contract was entered into in English with Deutsche Telekom's subsidiary in the USA, T-Mobile USA. I relied on Deutsche Telekom's statements, including its privacy policies, which are posted in English on its Web site, and on the statements in English of its subsidiary T-Mobile USA. All of my correspondence regarding this matter with both T-Mobile USA and Deutsche Telekom, copies of which are attached, has been in English.

The following is a summary of my responses to the questions on your complaint form. Additional details are provided in the attached narrative statement and copies of e-mail messages and policies.

1. Welche Handlung oder Unterlassung ist Gegenstand der Beschwerde?

(A) Deutsche Telekom AG (DTAG) has failed to require its subsidiary T-Mobile USA (TMUS) to adopt or comply with DTAG's "Binding Corporate Rules Privacy" (BCRP).

(B) DTAG and its subsidiaries in member states of the European Union have transferred personal information pertaining to me, collected by them while I was roaming in Germany and other EU member states, to TMUS in the USA, without having in place "binding" rules to ensure subject access rights for this data.

(C) In response to my subject access request, neither DTAG nor TMUS has provided me with access to most of the personal data pertaining to me held by either of these companies.

(D) DTAG has provided no information whatsoever in response to my subject access request.

(E) The partial "response" provided by TMUS is obviously incomplete and entirely incomprehensible.

2. Welche Daten sind betroffen?

All data pertaining to me held by DTAG and/or TMUS, including but not limited to data collected by DTAG and DTAG subsidiaries while I was roaming using a SIM with a US telephone number as a subscriber of TMUS. Some of this data was and may still be held by DTAG and other DTAG subsidiaries, and some data collected by DTAG and DTAG subsidiaries in Germany and other EU member states pertaining to my roaming was transferred by DTAG and DTAG subsidiaries to TMUS in the USA for billing and possibly other purposes.

3. Wann erfolgte die Rechtsverletzung?

This violation pertains to data collected since I became a TMUS subscriber in 2004. This violation is continuing.

4. In welchem Bezug stehen Sie zu der Stelle oder Person, gegen die sich Ihre Beschwerde richtet?

I am a subscriber of TMUS. I have roamed in Germany and other EU member states with a TMUS SIM with a US telephone number, using cell towers and roaming services of DTAG and DTAG subsidiaries.

5. Was haben Sie bereits unternommen?

See attached detailed statement and attachments, including complete e-mail correspondence.

THE PRACTICAL NOMAD

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The Practical Nomad: How to Travel Around the World
The Practical Nomad Guide to the Online Travel Marketplace

<https://practicalnomad.com>

“The Practical Nomad” books and Web site are written by union labor:
Member, National Writers Union
(U.S. affiliate of the International Federation of Journalists)

19 August 2022

Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen

Postfach 20 04 44

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GERMANY

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Complaint of data protection (subject access and cross-border transfer) violation

Below and attached please find details of my complaint against Deutsche Telekom, AG (DTAG), for violations of my rights pursuant to the laws of Germany and the NRW, the General Data Protection Regulations (GDPR) of the European Union, DTAG’s “Binding Corporate Rules Privacy” (BCRP), and DTAG’s contractual commitment, on which I relied, to require its subsidiaries to adopt and comply with the BCRP.

I apologize that I do not understand the German language, and request your consideration of this complaint in English. My contract was entered into in English with Deutsche Telekom's subsidiary in the USA, T-Mobile USA. I relied on Deutsche Telekom's statements, including its privacy policies, which are posted in English on its Web site, and on the statements in English of its subsidiary T-Mobile USA. All of my correspondence regarding this matter with both T-Mobile USA and Deutsche Telekom, copies of which are attached, has been in English.

1. I am a mobile phone and mobile Internet access subscriber of T-Mobile USA (TMUS), a subsidiary in the USA owned and controlled by Deutsche Telekom AG.
2. I have been a subscriber of TMUS since 2004.

3. At the time I became a subscriber of TMUS, TMUS was 100% owned by DTAG.
4. I was aware in 2004 that TMUS was a subsidiary owned and controlled by DTAG. I chose TMUS over its U.S. competitors (which at that time were larger and better known in the USA) in significant part because TMUS was controlled by DTAG.
5. I am aware that U.S. law does not guarantee adequate protection for personal data, including subject access rights. All else being equal, I choose to give my business to companies based in the European Union or Canada, or their subsidiaries in the USA, rather than purely U.S. entities, in order to ensure adequate protection of my personal data, especially my subject access rights. This is especially true with respect to services that involve the collection of extensive amounts of personal data. Both fixed and mobile telephone and and Internet access services are among the most important such services.
6. I relied on DTAG to ensure that my personal data collected by or transferred to TMUS would be adequately protected, and that I would have the right to access my data.
7. On 17 February 2004, in response to the first e-mail message I received from TMUS, I informed TMUS (privacy@t-mobile.com) that, “A major factor in my choice of mobile phone carrier was your status as a subsidiary of a company based in the European Union, and subject to the EU Data Protection Directive.”¹
8. I received a reply from “T-Mobile Privacy” (privacy@t-mobile.com) confirming receipt of my message. TMUS did not dispute my statement that TMUS was a subsidiary of a company based in the EU, and was subject to the EU Data Protection Directive. If TMUS thought my belief was incorrect, it could and should have so informed me.
9. At no time until I tried to exercise my subject access rights in 2021 was I ever informed by TMUS or DTAG that TMUS was no longer a subsidiary of a company based in the EU or was no longer subject to the EU Data Protection Directive or its successor legislation, the EU General Data Protection Regulations (GDPR).
10. DTAG’s Web site includes “Binding Corporate Rules Privacy (BCRP)”.²
11. DTAG is aware and intends that the “claims” in the BCRP are relied on by customers of all subsidiaries of DTAG. According to the “Preamble” to the BCRP:

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1. A complete copy of all of my correspondence with TMUS and DTAG relevant to this complaint is attached. I apologize that this correspondence is voluminous. I have attempted to include the relevant excerpts in this narrative, but I have attached the complete record of this correspondence to avoid any allegation of withholding evidence or quoting out of context, and to show the extent of my persistence and diligence in pursuing and exhausting all possibility of resolving this issue with TMUS and DTAG before bringing this complaint.
 2. <https://www.telekom.com/resource/blob/323318/ce2bab699cb8cb249bd66fa2d905e956/dl-binding-corporate-rules-privacy-data.pdf> (Version 2.8, last revised February 2019, most recently accessed 19 August 2022).

“In many areas, the Deutsche Telekom Group is perceived by its customers and the general public as a single entity. Therefore it is the common concern of Deutsche Telekom Group companies to make an important contribution to the joint success of the company and to support the claim of the Deutsche Telekom Group of being a provider of high-quality products and innovative services by implementing these Binding Corporate Rules Privacy.

“In providing these Binding Corporate Rules Privacy, the Deutsche Telekom Group is creating a standardized and high level of data privacy worldwide, applicable to the processing of data both within one company and across companies, and to the transfer of data within Germany and internationally.

“Within the Deutsche Telekom Group, personal data must be processed by the recipient according to the principles of data protection law that apply to the transferring party.”

12. With respect to the data pertaining to my roaming transferred by DTAG to TMUS, the “transferring party” is DTAG, and the applicable law is that of Germany and the EU.

13. Part One of the BCRP, “Scope”, provides as follows:

“The Binding Corporate Rules Privacy shall be binding with regard to the processing of personal data... by all Deutsche Telekom Group companies which have adopted them on a legally binding basis. The Binding Corporate Rules Privacy shall also be binding on all companies that can be required by Deutsche Telekom to adopt them and on all companies that have adopted them on a voluntary basis, regardless of where data is collected.... The Binding Corporate Rules Privacy shall apply to all types of personal data processing within the Deutsche Telekom Group, regardless of where the data is collected.”

14. As of today, 19 August 2022, Deutsche Telekom’s Web site says that the “Stake held by Deutsche Telekom (directly/indirectly)” in T-Mobile USA, Inc. is 64.78%.³

15. As of today, 19 August 2022, T-Mobile’s corporate Web site says that Deutsche Telekom is “T-Mobile’s majority stockholder”: “Timotheus Höttges has served as a director of T-Mobile and chairman of the board since April 30, 2013.... Since January 2014, Mr. Höttges has served as chief executive officer of Deutsche Telekom, T-Mobile’s majority stockholder.”⁴

16. According to the “Notice of Annual Meeting of Stockholders and Proxy Statement” filed by T-Mobile US, Inc. with the U.S. Securities and Exchange Commission⁵ and dated 27 April 2022, p. 11:

“WE ARE A CONTROLLED COMPANY WITH CERTAIN EXEMPTIONS

3. <https://www.telekom.com/en/company/worldwide> (tab for “North America)

4. <https://www.t-mobile.com/our-story/executive-leadership-team>

5. <https://www.sec.gov/Archives/edgar/data/1283699/000119312522123750/d266878ddef14a.htm>

“Since Deutsche Telekom and SoftBank hold approximately 46.6% and 4.9%, respectively, of our outstanding shares of common stock as of March 31, 2022, and pursuant to the Proxy Agreements, Deutsche Telekom has voting control, as of March 31, 2022, over approximately 51.9% of the outstanding shares of our common stock (including approximately 0.4% and 4.9% of the outstanding shares of common stock held by Claire Mobile and SoftBank, respectively), we are deemed a “controlled company” under the NASDAQ Stock Market LLC (“NASDAQ”) rules.”

17. The Board of Directors of T-Mobile US, Inc. has thirteen members. According to the same “Notice of Annual Meeting of Stockholders and Proxy Statement”, p. 69, DTAG has the right to designate ten of those thirteen members:

“Pursuant to the Second Amended and Restated Stockholders’ Agreement we entered into with Deutsche Telekom and SoftBank on June 22, 2020 (the ‘Stockholders’ Agreement’), we granted certain governance and other rights to Deutsche Telekom and SoftBank, and each of Deutsche Telekom and SoftBank agreed to certain restrictions....

“The rights and restrictions applicable to Deutsche Telekom under the Stockholders’ Agreement are further outlined below:

“Under the Stockholders’ Agreement, at all times when the sum of the collective voting percentage of Deutsche Telekom, SoftBank and Marcelo Claire is 50% or more, Deutsche Telekom can designate up to ten nominees for election to our Board.”

18. In fact, DTAG can use its ownership and/or control of voting rights to the majority of TMUS stock, and its right to designate ten of the thirteen members of the TMUS Board of Directors, to require TMUS to adopt and comply with the BCRP.

19. As a subscriber of TMUS, a frequent international traveller, and a travel journalist specializing in international travel, I have roamed extensively throughout Germany, sometimes travelling by bicycle for weeks at a time, using DTAG cell towers and a TMUS SIM with a US phone number for voice calls, SMS messages, and Internet access.

20. Personal data collected in Germany pertaining to my roaming usage of DTAG services in Germany has been transferred from DTAG in Germany to TMUS in the USA for billing on my TMUS account and possibly for other undisclosed purposes.

21. Similarly, I have travelled in other countries including, but not limited to, Austria, Croatia, Czechia, Denmark, Finland, Hungary, Slovakia, and Sweden, using roaming services provided by subsidiaries owned and/or controlled by DTAG. Personal data collected in those countries pertaining to my roaming usage in those countries has been transferred from DTAG subsidiaries in those countries to TMUS in the USA for billing on my TMUS account and possibly for other undisclosed purposes.

22. I am an award-winning travel journalist and investigative reporter. I am a member and have been a national officer of my trade union, the National Writers Union (NWU), one of the U.S. affiliates of the International Federation of Journalists (IFJ). I am

a member of an IFJ Expert Group and have represented the NWU and IFJ to other organizations and government bodies in the U.S., EU, and elsewhere in the world. Data collected by DTAG while I have been roaming in Germany, and transferred to TMUS for billing and possibly other purposes, includes records related to my work as a trade union officer and as a journalist, including my communications with confidential sources.

23. I have regularly recommended TMUS to my friends, my family, and my readers, in part on the basis of the status of TMUS as a subsidiary of DTAG committed to comply with EU law and DTAG group policies, specifically including subject access rights.

24. For example, in a column about international roaming published on my Web site and distributed to more than 5,000 subscribers to my e-mail newsletter in 2012,⁶ I wrote, “See these examples obtained by a German Green Party politician from the German parent company of T-Mobile USA for what sort of location-based information about us is routinely collected. T-Mobile USA customers are entitled by German data protection law to find out this same information about what location and other data the company collects about you.” My reputation as a journalist is linked to the accuracy of my reporting. If TMUS does not afford data subjects these rights, my reputation is damaged.

25. As soon as I received a final answer from DTAG that it would not keep its promises, I posted an article in my blog warning my readers, and added links to this article from my earlier archived articles mentioning and recommending TMUS on the basis, in part, of its relationship to DTAG.⁷ But I have no way to contact or warn all those who have read these articles and relied on my recommendations in the past.

26. In August 2021, I learned from news reports that some T-Mobile customer data had been breached. I did not know if my data had been breached.

27. On 27 August 2021, TMUS posted an article in its blog by Mike Sievert, CEO of T-Mobile, stating, “As of today, we have notified just about every current T-Mobile customer or primary account holder who had data such as name and current address, social security number, or government ID number compromised.”⁸

28. As of the publication of this blog post by TMUS on 27 August 2021, I had received no notice from TMUS. So I assumed my data had not been compromised.

29. Almost two months later, I received a notice from TMUS dated 22 October 2021⁹, “On August 17, 2021, T-Mobile learned that a bad actor illegally accessed personal data from T-Mobile systems, to which the criminal gained access on or before July 19, 2021....

6. “Will my smartphone work abroad?”, 30 September 2012, <https://hasbrouck.org/blog/archives/002030.html>

7. The Practical Nomad: Edward Hasbrouck’s blog, “T-Mobile and Deutsche Telekom lie to customers”, 9 August 2022, <https://hasbrouck.org/blog/archives/002653.html>

8. <https://www.t-mobile.com/news/network/cyberattack-against-tmobile-and-our-customers>

9. A complete and unredacted copy of this notice is attached to this complaint.

[W]e have determined that unauthorized access to your personal information has occurred, including your name, driver's license/ID information, date of birth, and Social Security number." Neither in that notice, nor at any time since, have I received any explanation for the delay in providing me with notice of the breach of my data.

30. Delay in notice of a data breach is itself a grave breach of data production. Delay prevents victims of the data breach from taking prompt action to mitigate the damage from the breach.

31. I do not know why TMUS has any record of my drivers license/ID, date of birth, or Social Security number. To the best of my knowledge, TMUS has no legitimate reason to retain this information. So far as I know, neither a driver's license, ID, nor a Social Security number is required for a mobile phone account by U.S. law or TMUS' tariff.

32. Although the notice had a section on "What you can do", it didn't say anything about how to request a copy of the data about me held by TMUS or an accounting of what data had been disclosed.

33. On 26 October 2021, as soon as I received the data breach notice, I immediately contacted TMUS to request a complete copy of the personal data about me held by TMUS and an accounting of what data had been disclosed, as my first step to assess the threat and mitigate the damage from the data breach.

34. On 1 November 2021, I received a "response" to my access request in the form of a 46-page PDF file.¹⁰ It was largely incomprehensible, but obviously incomplete.

35. The response from TMUS explicitly acknowledged that some categories of personal data held by TMUS were not included in the response:

"A report with specific pieces of personal data we hold about you is attached. For your protection, we are not including full responses for sensitive personal data, such as your Social Security Number or credit card number, but the report will indicate when we hold such data. Similarly, we are not including other sensitive network or business records that may reflect the network activities for you or others using your account, such as websites visited, viewing history and location history. Certain billing related activity, such as calls made and received, may be available through your online account depending on your account type and relationship with the person responsible for the account."

36. "For your protection" is not a permissible basis for failure to comply with a subject access request. It is for my own protection that I want to exercise my subject access rights.

37. "Sensitive" data is among the most important data for a data subject to be able to access in order to assess and mitigate the damage from a breach of such data.

10. A complete and unredacted copy of this PDF file is attached to this complaint.

38. On 20 November 2021, I wrote to the TMUS privacy office (“privacy@t-mobile.com”) and TMUS Chief Privacy Officer Kelsey Joyce (“kelsey.joyce@t-mobile.com”):

“I reiterate my request for all personal data about me held by you, including but not limited to billing records, customer service records (whether in text form or audio recordings of customer service calls), call records, mobile data records, cell tower records, roaming records, location records, biometric information, and records of my driver’s license/ID information and Social Security number. I request that all of this information be provided in readily understandable form. I request that database extracts or other tabular data be provided in non-proprietary database or tabular format, so that I can readily import it into other data analytics software, and that it be accompanied by field definitions and field value coding schema.”

39. On 24 November 2021 I received the following response from “The T-Mobile Privacy Team”:

“For your protection, we do not include full responses for sensitive personal data, such as your Social Security Number or credit card number. Similarly, we do not include other sensitive network or business records that may reflect the network activities for you or others using your account, such as websites visited, viewing history and location history. At this time, T-Mobile does not provide this information.”

40. On 30 March 2022, after I contacted DTAG, I received the following final message from Sheila Dedeaux, Senior Manager, Privacy Compliance, TMUS:

“We are writing to bring a resolution to your inquiry with the T-Mobile Privacy Office about concerns related to our response to your DSAR [data subject access request] request....

“T-Mobile’s Privacy Notice explains how T-Mobile and our subsidiaries and representatives collect, use, share, and protect your personal data. It also provides you with important information about your personal data choices. This Privacy Notice, and not that of Deutsche Telekom, applies to US-based customers and consumers of T-Mobile services.

“As our access report reflects, we do process certain sensitive personally-identifiable information about you; however, for your protection, and consistent with the California Consumer Privacy Act, we have redacted from our access report certain personal identifiers such as your Social Security Number or credit card number. The reason for this is to protect you against fraudulent or illegal activity if your access report is viewed by any unauthorized person....

“Finally, we understand that you also requested copies of all call recordings between you and T-Mobile.... To the extent that we do have recorded calls between you and T-Mobile, release of those recordings is done only upon receipt of a validly issued subpoena or court order which can be faxed to our Legal and Emergency Response Group at 973-292-8697.”

41. I have received no further communication regarding this matter from TMUS.

42. As soon as I received this message from TMUS purporting to “bring a resolution to your inquiry with the T-Mobile Privacy Office” on 30 March 2022, I wrote to DTAG’s designated privacy contact, “Datenschutz@telekom.de”, as follows:

“Subject: Request to compel T-Mobile USA to comply with Binding Corporate Rules

“As a customer of T-Mobile USA, a member of the Deutsche Telekom Group, I have received the message below from T-Mobile USA in response to my subject access request for all records pertaining to me held by T-Mobile.

“My request includes, but is not limited to, location data, biometric data, call and billing records, mobile data records, and call recordings.

“I am writing again to request that you compel T-Mobile USA to provide the information I have requested, in accordance with your promises....

“T-Mobile USA is unwilling to provide most of the information I requested and to which I am entitled by your policy.

“T-Mobile USA claims that it has withheld from me the information pertaining to me that I requested, to ‘protect’ me.

“This is... legally insufficient, because the ‘Binding Corporate Rules Privacy’ does not make or permit an exception to subject access rights for this or any other category of personal information.

“Since T-Mobile USA is unwilling to keep its promise, I must again ask Deutsche Telekom to take prompt, effective action -- as you have promised to do, and as I have counted on you to do if it ever became necessary -- to compel T-Mobile USA to act in accordance with your Binding Corporate Rules Privacy by providing me with the information I have requested.

43. DTAG’s “Group Privacy” responded on 12 April 2022:

“As far as legally possible, the companies of the Deutsche Telekom Group have also committed themselves to the Binding Corporate Rules Privacy, which are designed to ensure a uniformly high level of data privacy for our products and services.

“T-Mobile is an independent stock corporation and complies with the laws and data privacy regulations that apply in the United States.

“In accordance with its § 1, the Binding Corporate Rules Privacy apply to all companies of the DT [Deutsche Telekom] Group that have subscribed to it.

“In view of the circumstances under stock corporation law, T-Mobile US has not subscribed to it.

“Thus, the Binding Corporate Rules Privacy (and the mentioned paragraphs in your message) do not apply to T-Mobile US.”

44. I immediately replied to DTAG on 12 April 2022, as follows:

“This statement cites to only a portion of § 1 of the Binding Corporate Rules Privacy. This section of the BCRP continues, ‘The Binding Corporate Rules Privacy shall **also** be binding on all companies that can be required by Deutsche Telekom to adopt them.’ [emphasis added]...

“As a subsidiary of Deutsche Telekom, T-Mobile USA ‘can be required by Deutsche Telekom’ to adopt and comply with the BCRP. T-Mobile USA must, of course, comply with US law. But it can also comply with the BCRP. The BCRP does not require T-Mobile USA to take any action prohibited by US law, and I have not requested that T-Mobile USA take any action to fulfill my data subject access rights that would be prohibited by US law.

“Deutsche Telekom has promised that it would, if it can, ‘require’ its subsidiaries and members of the Telekom Group in which it holds a controlling interest, including T-Mobile USA, to adopt the BCRP.

“Deutsche Telekom is both able and obligated to keep this promise.

“I request that, in accordance with the commitments made by both Deutsche Telekom and T-Mobile USA, and in accordance with your BCRP, Deutsche Telekom exercise its authority as the controlling shareholder of T-Mobile USA to compel T-Mobile USA (1) adopt the BCRP, and (2) comply with the BCRP by providing me with access to all of the information which I have requested in my pending data subject access request.”

45. In response, DTAG repeated their previous statement verbatim, without further explanation. I wrote back on 13 April 2022, as follows:

“Your message considers only the first of two clauses in section 1 of your BCRP, and ignores the applicable second clause, ‘The Binding Corporate Rules Privacy shall also be binding on all companies that can be required by Deutsche Telekom to adopt them.’”

“Your statement that, ‘Thus, the Binding Corporate Rules Privacy (and the mentioned paragraphs in your message) do not apply to T-Mobile US’ is clearly false, in terms of the clause I cited.

“As the controlling shareholder of T-Mobile USA, Deutsche Telekom **can** require T-Mobile USA to adopt these rules. Pursuant to your BCRP, Deutsche Telekom therefore **must** require T-Mobile USA to adopt them.

“I again request that Deutsche Telekom take action to fulfill the promise you have made to Telekom Group customers worldwide, and that I have relied on.”

46. In its response on 14 July 2022, Deutsche Telekom reiterated their claim to be “unable” to enforce their “binding” corporate rules on their own subsidiary TMUS:

“From a legal perspective, since TM [T-Mobile] US is an independent stock corporation, we as Deutsche Telekom cannot require TM US to adopt the BCRP.”

47. On 14 July 2022 I asked DTAG:

“(1) Is the claim made on both the T-Mobile USA and Deutsche Telekom Web sites, and on which I and other customers have relied, that Deutsche Telekom is the controlling stockholder of T-Mobile USA, not correct?

“(2) As the controlling stockholder of T-Mobile USA, is not Deutsche Telekom able to compel T-Mobile USA to take action?”

48. DTAG responded as follows on 15 July 2022:

“As already communicated to you with our previous response, we as Deutsche Telekom cannot require TM [T-Mobile] US to adopt the BCRP, since TM US is an independent stock corporation.”

49. In response to my further inquiry, I got the following message on 27 July 2022:

“TMUS [T-Mobile USA] became a publicly traded company in 2013 with a significant stockholder, DTAG [Deutsche Telekom AG] following a business combination with MetroPCS Communications, Inc., however TMUS is independent stock corporation and committed to Good Corporate Governance to promote the long-term interests of ALL stockholder.

“Since Deutsche Telekom and SoftBank hold approximately 46.6% and 4.9%, respectively, of TMUS shares and pursuant to the Proxy Agreements (1; entered between DTAG and SoftBank 2; entered between DTAG and Marcelo Claire /Claire Mobile LLC) DTAG has voting control, over approximately 51.9% of the outstanding shares of TMUS’s common stock (including approximately 0.4% and 4.9% held by Claire Mobile and SoftBank, respectively), TMUS is deemed a ‘controlled company’ under the NASDAQ Stock Market LLC rules....

“In the view of the above DTAG is not able to compel T-Mobile USA to take action and adopt the BCRP.”

50. On 27 July 2022. I replied as follows:

“If Deutsche Telekom has voting control over 51.9% of T-Mobile USA stock, why is Deutsche Telekom not ‘able’ to compel T-Mobile USA to take action and adopt the BCRP?”

“Your message seems only to confirm and clarify that Deutsche Telekom is, in fact, ‘able’ to compel T-Mobile USA to adopt the BCRP.

“Pursuant to the BCRP, if Deutsche Telekom is able to to compel T-Mobile USA to adopt the BCRP, Deutsche Telekom is required to do so.

“I again request that Deutsche Telekom, as controlling shareholder of T-Mobile USA, compel T-Mobile USA to adopt and comply with the BCRP.”

51. On 1 August 2022 I received the following final answer from DTAG:

“The rights that DT can exercise against TMUS result from many different aspects, in particular from the overall context, and not from individual passages you extracted.

“We have already described the overall context to you in the previous e-mail. We are happy to repeat...

“In the view of the above DTAG is not able to compel T-Mobile USA to take action and adopt the BCRP.

“We kindly ask you to refrain from further inquiries regarding this matter. Since we have discussed all aspects several times, we won’t answer further emails from you.”

52. Neither TMUS nor DTAG have provided me with any data pertaining to my roaming in Germany with DTAG or in the territory of DTAG or other DTAG subsidiaries.

53. Neither TMUS nor DTAG have provided me with most of the personal data pertaining to me held by them, including, *inter alia*, billing records, customer service records (including audio recordings of customer service calls), call records, mobile data records, cell tower records, roaming records, location records, biometric information, and records of my driver’s license/ID information and Social Security number.

54. Neither TMUS nor DTAG have provided me with any accounting of which specific information pertaining to me has been disclosed to which specific third parties.

55. DTAG is, in fact, “able” to require TMUS to adopt the BCRP.

56. TMUS is the largest subsidiary of DTAG. TMUS has more than 100 million subscribers, which is more than DTAG in Germany or any other DTAG subsidiary.

57. TMUS collects more personal information about more individuals than any other U.S. subsidiary of a company based in Germany or anywhere else in the EU.

58. Ensuring compliance with the BCRP and the GDPR by TMUS is the single most important duty of DTAG with respect to data protection.

59. Ensuring compliance with the GDPR by TMUS is the single most important task for EU data protection officers with respect to U.S. subsidiaries of EU-based companies.

60. The claim by DTAG that it is “unable” to require TMUS to adopt the BCRP is false and deceptive.

61. The claim by DTAG that the BCRP do not apply to TMUS is false and deceptive.

62. Since DTAG is able to require TMUS to adopt the BCRP, the BCRP apply to all processing of data by TMUS, whether or not TMUS has actually adopted the BCRP.

63. DTAG’s failure to compel TMUS to adopt the BCRP, when DTAG has promised to do so whenever it was able to do so, is a breach of DTAG’s contractual commitments.

64. Even if DTAG were unable to require TMUS to adopt the BCRP, the BCRP, the GDPR and German law would apply to personal data transferred by DTAG to TMUS.

65. The GDPR generally prohibits transfers of data from the EU to entities in non-EU jurisdictions that do not guarantee an adequate level of data protection.

66. In the absence of binding corporate rules or binding contractual commitments, U.S. law does not guarantee an adequate level of data protection.

67. Neither DTAG nor TMUS have self-certified in the EU-U.S. Privacy Shield Framework, which purports to provide a basis for transfers of personal data from the EU to the USA.¹¹

68. Since TMUS has not adopted the BCRP, and DTAG has not required TMUS to adopt the BCRP, the BCRP does not provide a lawful basis for transfers of personal data from DTAG or other DTAG subsidiaries in the EU to TMUS.

69. Neither TMUS nor DTAG have indicated any purported lawful basis for transfers of personal data from DTAG in Germany to TMUS in the USA.

70. Adequate data protection, as defined in the GDPR, includes subject access rights.

71. TMUS does not provide subject access rights to data transferred from DTAG in Germany or from DTAG subsidiaries in other EU member states subject to the GDPR.

72. Since TMUS does not provide adequate protection including subject access rights to personal data, all transfers of personal data from DTAG to TMUS violate the GDPR.

73. These violations have persisted since 2004, and were only exposed because of a data breach by DTAG’s U.S. subsidiary.

11. https://www.privacyshield.gov/participant_search

74. DTAG has chosen to persist in these violations, even after they were brought to its attention by victims of the data breach. These violations are knowing and deliberate.

75. Denial of subject access rights is causing ongoing grave harm to victims of this data breach. Despite diligent effort, I and other victims of this data breach are still unable, more than a year after the breach, to determine what data was held or breached, or to even begin to take appropriate action to assess the threat or mitigate the damage.

76. Based on the foregoing, I request that you:

- (a) Order DTAG to require TMUS to adopt and comply with the BCRP, in accordance with its promises to consumers, on which we have relied.
- (b) Order DTAG to provide (or to require its subsidiary TMUS to provide) subject access rights, including an accounting of disclosures, with respect to all data transferred to TMUS by DTAG or its other subsidiaries in the EU.
- (c) Order DTAG to provide (or to require its subsidiary TMUS to provide) subject access rights, including an accounting of disclosures, with respect to all data collected by TMUS in reliance on DTAG claims that the BCRP would apply.
- (d) Prohibit any transfers of personal data, including roaming data, by DTAG or other DTAG subsidiaries in the EU to TMUS until TMUS adopts and complies with the BCRP or implements and guarantees adequate protection for this data.
- (e) Impose appropriately severe penalties commensurate with the deliberateness and the extraordinarily large scope, duration, and gravity of the violations.
- (f) Make any appropriate referrals to other authorities responsible for enforcement of laws related to truth in advertising, fraud, and/or breach of contract.

Sincerely,

Edward Hasbrouck

cc: Bundesbeauftragte für den Datenschutz und die Informationsfreiheit
Graurheindorfer Str. 153
53117 Bonn
GERMANY
poststelle@bfdi.bund.de

Attachments:

1. “Beschwerde zum Datenschutz”, LDI-NrW (PDF file, 3 pages)
2. T-Mobile “Notice of Data Breach”, 22 October 2021 (PDF file, 4 pages)
3. “T-Mobile Personal Information Access Report” (PDF file, 46 pages)
4. E-mail correspondence with TMUS and DTAG (PDF file, 112 pages)