



noyb – European Center for Digital Rights
Goldschlagstraße 172/4/3/2
1140 Vienna
Austria

Österreichische Datenschutzbehörde (DSB)
Barichgasse 40-42
1030 Wien

Per E-Mail: dsb@dsb.gv.at

Wien, 11.01.2024

noyb Case-No: **C-076**

Complainant:



represented under
Article 80(1) DSGVO by:

noyb – European Center for Digital Rights
Goldschlagstraße 172/4/3/2, 1140 Wien

Respondent:

Meta Platforms Ireland Limited
Merrion Road
Dublin 4
D04 X2K5, Ireland

Regarding:

Article 7(3) GDPR – withdrawal of consent

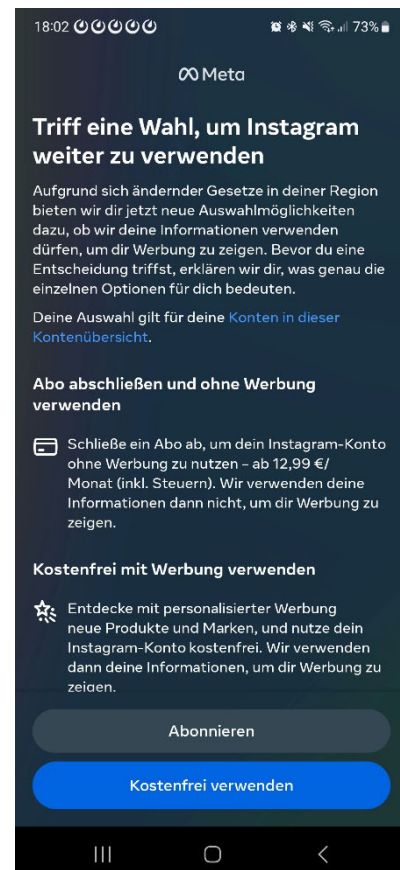
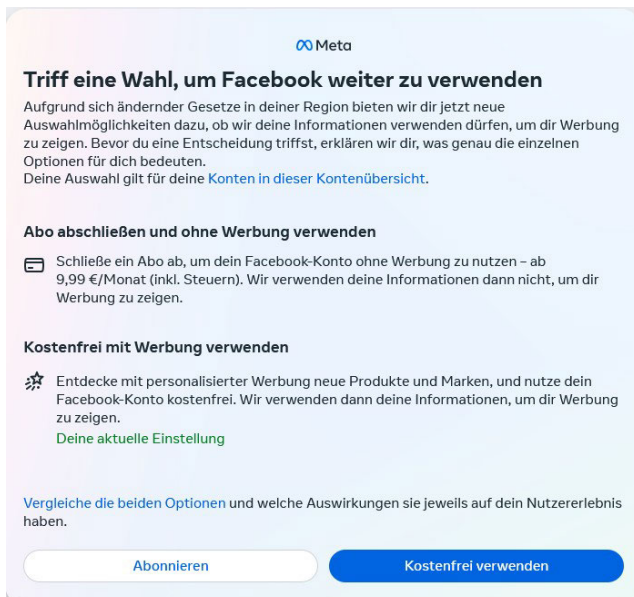
COMPLAINT

1. REPRESENTATION

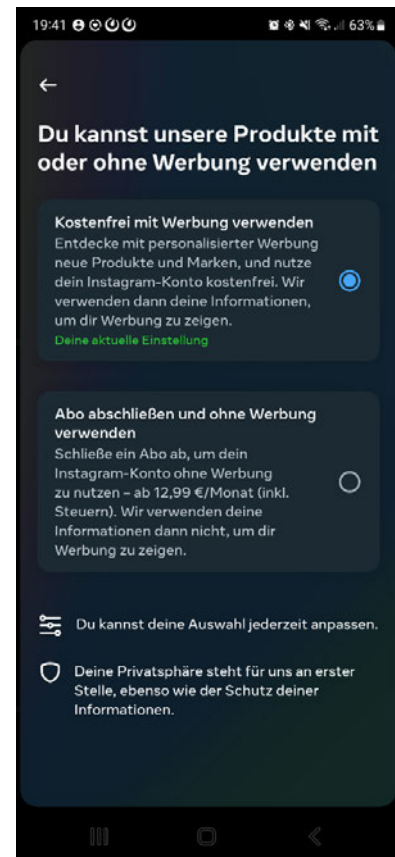
1. *noyb* – European Center for Digital Rights is a not-for-profit organisation active in the field of the protection of data subjects’ rights and freedoms with its registered office in Goldschlagstraße 172/4/2, 1140 Vienna, Austria, registry number ZVR: 1354838270 (hereinafter: „*noyb*“) (**Attachment 1**).
2. *noyb* is representing the complainant under Article 80(1) GDPR (**Attachment 2**).

2. FACTS PERTAINING TO THE CASE

3. Meta Platforms Ireland Limited (“Meta” or “the controller”) is the controller for the social media platforms Facebook and Instagram.
4. Since the beginning of November 2023, Instagram and Facebook users can choose between accepting processing of their personal data for the purpose of personalised advertising or paying a monthly subscription.
5. The complainant clicked on the option to allow processing of personal data on his Facebook and Instagram accounts and, as a consequence, his personal data was processed by Meta for the said purpose. Consent only required a simple click on the right button of the new banner implemented by Facebook and Instagram (“*Kostenfrei verwenden*”).



6. On 03.12.2023, the complainant wanted to withdraw his consent. The complainant had to navigate through several windows and banners in order to find the page where he could actually revoke consent.
7. When the complainant finally reached the correct page, he was confronted with two options. The first – preselected and reflecting his current situation – was to continue using Facebook with trackers (“*Kostenfrei mit Werbung verwenden*”). The second entailed the purchase of a €9,99 monthly subscription, in order to have access to the service without being tracked (“*Abo abschließen und ohne Werbung verwenden*”) – see screenshot below, left side.



8. It was not possible to find any other option to withdraw consent on the controller’s platform. Thus, the data subject was unable to withdraw consent for free and was hence unable to exercise his rights.
9. On 04.12.2023, the data subject attempted to withdraw consent to the processing for the purpose of targeted advertising from his Instagram account. The procedure to revoke consent was very similar to the one just described and also in this case it culminated with a page where the complaint was asked to buy a monthly subscription – this time amounting to €12,99 (see screenshot above, right side)
10. As no other option to withdraw consent was available on the controller’s platform, the data subject was again unable to revoke consent.

3. GROUNDS FOR THE COMPLAINT

11. When a user opens their Facebook or Instagram account for the first time after November 2023, it is extremely easy to consent to the processing for the purpose of targeted advertising. As a matter of fact, a single click is sufficient. In order to withdraw this consent, on the other hand, a data subject is forced to either subscribe and pay the monthly fee or delete their account.
12. Article 7(3) GDPR, fourth sentence, introduces a simple equality test when it states that “*it shall be as easy to withdraw as to give consent*”. By requiring to buy a subscription of €9,99 or 12,99 per year as a condition to withdraw consent, the controller violated this provision.
13. In both cases withdrawing is not “*as easy as*” giving consent, since the data subject has to bear significant negative consequences.
14. The EDPB guidelines specifically mention monetary costs as an example of detriment incompatible with the principle enshrined in Article 7(3) and Recital 42 GDPR (EDPB guidelines 05/2020, Par. 46 and 48). Indeed, it is difficult to grasp how a click on the first banner of the controller would be equivalent to a 9,99 or 12,99 €/month subscription.

4. REQUESTS AND SUGGESTIONS

15. The complainant asks the competent supervisory authority to make use of its investigative powers under Article 58(1) GDPR to the extent that is necessary to handle this complaint.
16. The complainant requests the supervisory authority to declare that that the respondent violated Article 7(3) GDPR by not making it as easy to withdraw consent as it was to give it.
17. The complainant also requests the supervisory authority to make use of its corrective powers pursuant to Article 58(2) GDPR. In particular, under Article 58(2)(d) GDPR, the supervisory authority should order the controller to bring processing operations in compliance with Article 7(3) GDPR and offer its users an easy withdrawal option.
18. Finally, the complainant suggests the adoption of an administrative fine pursuant to Articles 58(2)(i) and 83 GDPR, to the extent appropriate to dissuade the controller from further violations of the law.

5. CONTACT

19. Communications between *noyb* and the DSB in the course of this procedure can be done by email at [REDACTED] with reference to the **Case-No 076** or by phone at [REDACTED].