

GZ: 2020-0.586.738 from November 23, 2020 (case number: DSB-D124.2390)□

[Note editor: Names and companies, legal forms and product names,□

Addresses (incl. URLs, IP and email addresses), file numbers (and the like), etc., as well as□

their initials and abbreviations may be abbreviated for reasons of pseudonymization□

and/or changed. Obvious spelling, grammar and punctuation errors□

have been corrected.]□

NOTICE□

S P R U C H□

The data protection authority decides on Lea A****'s data protection complaint□

(Appellant), represented by lawyer Dr. Horst N***, March 30, 2020 (ha.□

received on March 31, 2020), supplemented with submission of May 8, 2020, against the□

Y*** Insurance Ltd□

(Respondent) due to **injury 1)**□

in the right to□

confidentiality and 2) the right to erasure as follows:□

- The complaint is dismissed as unsubstantiated.□

Legal basis: Art. 4 Z 1, Z 7, Z 8 and Z 15, Art. 6 Para. 1 lit. c and lit. f, Art. 9 Para.□

Art. 12 (3), Art. 17 (1) and (3), Art. 21, Art. 51 (1), Art. 57 (1) lit□

Article 77 paragraph 1 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter:□

GDPR), OJ No. L 119 of 4.5.2016 p. 1; §§ 1 para. 1 and para. 2, 18 para. 1 and□

24 Section 1, Section 5 and Section 6 of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended;□

Section 110 (1) of the Insurance Supervision Act 2016 – VAG 2016, Federal Law Gazette I No. 34/2015□

idgF; Section 11a (1) of the Insurance Contract Act – VersVG, Federal Law Gazette No. 2/1959 as amended;□

A. Submissions of the parties and course of the proceedings□

REASON□

1. With filings dated March 30, 2020 (ha. received March 31, 2020) and May 6, 2020□

(ha. received on May 8, 2020) the complainant asserted □

their □

law-friendly representatives a violation of the right to secrecy and the right to □

Deletion and summarized it as follows: □

On December 20, 2019, the complainant submitted an application for the conclusion of a □

Life insurance "L***kasko" provided to the Respondent. On February 7, 2020 □

the respondent rejected this request without justification. In this □

In connection, the Respondent has the name and date of birth of □

Complainant and the fact that the application to the association was rejected □

Insurance companies in Austria for an entry in the central information system □

("ZIS"). The complainant suffers from type 1 diabetes □

apparently rejected because of this illness. This constitutes discrimination □

of the complainant. On February 21, 2020, the complainant issued her □

Revoke consent to data processing in accordance with Article 17 (1) (b) GDPR and a □

Deletion of your data in accordance with Art. 17 leg. cit. required in the ZIS. On February 26, 2020, the □

Respondent the revocation of further processing and the deletion of the data □

expressly rejected. As taken from the Respondent's privacy policy □

could be, the Association of Austrian Insurance Companies (VVO) acted as □

processor, □

the □

participating insurance companies □

– □

i.a. □

the □

Respondent – as jointly responsible. The complainant has - □

as already mentioned – revoke your consent. The Respondent leads as □

Justification that the data processing is to protect the legitimate interests of

Community of insured persons and the participating insurance companies of the VVO. It stands

Although there is no doubt that the data processing in question is in compliance with

serves the legitimate interests of the participating insurance companies, Art. 6 Para. 1

lit. f GDPR, however, require a weighing of interests. Since the data stored in the ZIS

are freely accessible to all insurance companies, that is what the complainant said

very concrete consequences, namely the rejection by other insurance companies,

sometimes even without a preliminary examination. The lack of insurance protection – and therefore not that

insured risk of death - have enormous consequences for the complainant: e.g.

founding a company or the lack of family security or the lack of it

Retirement provision. It would also be more difficult for diabetics to get a loan, as it is for hedging purposes

Life insurance is often required. As part of the balancing of interests

in particular Art. 21 (and Art. 14) EU Charter of Fundamental Rights to be taken into account, according to which

Discrimination, especially because of a disability, is prohibited. diabetes spot

undoubtedly represents a disability (cf. § 2 Disability Employment Act and the Rsp.

of the ECJ and the ECtHR). The Insurance Contract Act also prohibits rejection

an insurance relationship due to a disability. The legitimate interest

the complainant therefore exceeds the interests of the respondent and is the

Data processing is therefore inadmissible as a result. A bundle was attached to the entries

documents attached.

2. With the settlement of May 11, 2020, the data protection authority requested the respondent

for comment.

3. With a submission dated June 17, 2020, the Respondent submitted as follows:

It is correct that on December 20, 2019 the complainant submitted an application for completion

of a life insurance contract and this from the Respondent on

February 7, 2020 was rejected. It is also correct that the Respondent

Letter dated February 7, 2020 pointed out that they used the name, the

date of birth and the fact that the application was rejected to the ZIS.

The complainant's letter of February 21, 2020 is a request for deletion

according to Art. 17 GDPR interpreted. By e-mail dated February 26, 2020, the

Respondent stated, on the basis of detailed reasons, that

she cannot comply with the request for deletion. A confrontation with one

The complainant's consent had not been revoked, especially since the

Complainant - contrary to the statements of her legal representative on March 30, 2020

and on May 6, 2020 – did not raise a revocation. Incidentally, on the part of

No consent was obtained from the Respondent, which means that a revocation is also not possible

it is possible. On March 30, 2020, the complainant's legal representative

Objection pursuant to Art. 21 GDPR raised. By replicating letter dated April 7th

the Respondent stated that the request for deletion was for reasons of efficiency

will be complied with. On April 1, 2020, the deletion of the name, des

date of birth and the fact that the complainant's application was rejected

had been caused. Why the legal representative in his supplementary submission

of May 6, 2020 continue to complain about the violation of the right to erasure, is therefore not

understandable. The Respondent had the Appellant's request in mind

of Section 24 (6) DSG.

Regarding the alleged violation of the right to secrecy, it is stated that the

Processing to protect the legitimate interests of the insured community and the

insurance company

necessary

be. According to

§ 110 VAG 2016

be

Insurance companies to set up an effective risk management system□

obligated. This includes all necessary policies, processes and reporting procedures that□

are necessary to assess the assumed and potential risks on an individual and□

aggregate basis and the interdependencies between these risks□

identify, measure, manage and report on. The ZIS, which the□

coordinated information between the participating insurance companies□

a part□

from that. It□

make a significant contribution□

for protection□

the□

insured group. The entry in the ZIS includes name, date of birth, the□

Information as to whether it is a new, change or cancellation notification□

Reporting date, the affected insurance class, the reporting case in the form of a numeric□

Coding and any disclaimer that may have been set. A query from the ZIS is□

on the occasion of the examination of an application for taking out insurance and on the occasion of the examination□

of a case of performance possible. Under no circumstances will the exact reasons (e.g. illness as□

Reason, type of illness) reported or announced. This is therefore also in the case of□

complainant□

not visible to other insurance companies.□

Insurance applicants would both in the application form and again in the presence of the□

Prerequisites for registering in the ZIS about actually being included in the system□

be informed. Overall, the legality - in particular due to the□

transparent information, notification in individual cases and the reporting of a□

numerical coding ("Rejected") - and the interests of the higher ranking□

Community of insured persons has been recognized and confirmed by the data protection authority (cf.□

also the proceedings before the DSB, GZ: DSB-D213.566). The input was a mixed lot

documents attached.

4. With a supplementary submission of July 23, 2020, the Respondent also stated that

that the data processing within the framework of the ZIS also includes the interests of third parties (specifically: others

Policyholder) serve, as it ensures that the income of a

Insurance company, through risk-adjusted premiums in a balanced

related to the expenses. It becomes an accusation of discrimination

pointed out that in coordination with the data protection authority aware of the notification

of the specific illness had been waived in order to maintain proportionality. Of the

There is therefore no specific reason for the refusal for other insurance companies

apparent. It is also very unlikely that other insurance companies

reject an application only on the basis of the registration in the ZIS without a preliminary check. Finally

will still be noted that all insurance companies, which the division of

Operate life insurance, query health-related data (cf. § 11a VersVG).

In the case of future applications, the complainant was therefore in any case obliged to disclose her

Illness obligated (cf. § 16 VersVG 2016). Otherwise, the examination (other)

discrimination in civil courts.

5. With the date of August 7, 2020, the data protection authority granted the

Appellant to be heard.

6. By submission of September 10, 2020 (ha. received on September 14, 2020) the

Complainant, through its law-friendly representative, proceeded as follows:

The complainant's right to deletion is in any case up to the actual deletion

violated by the Respondent. Incidentally, since this is only for "reasons of efficiency"

happened, the infringement continues. The Respondent admits

that the storage of the data in the ZIS allows for a closer examination of a future application

or the background of the registration. However, this can only be done by consulting the

notifying insurer. Even if you follow the explanations of the

Respondent may believe, it may be true that the

The complainant's health data had not been stored in the ZIS. One

However, secrecy does not take place because other insurance companies

closer examination of the background very well to the health data of the complainant

could reach. The discrimination takes place in that through the taking place

Query not only the data made known to the insurer, but also that of

be passed on to these considerations.

B. Subject of Complaint

Based on the complaint, the subject of the complaint is, on the one hand,

Question as to whether the complainant is still in the

Right to erasure pursuant to Art. 17 GDPR has been violated.

In addition, the subject of the complaint is the question of whether the Respondent

the complainant by processing her name, date of birth and

Circumstances of the rejection of the application for taking out life insurance dated

December 20, 2019 within the framework of the Central Information System ("ZIS") in the right to

secrecy according to § 1 Abs. 1 DSG.

C. Findings of Facts

1. The respondent is a company register number *2635 x

registered insurance company based in 1**0 Vienna. The complainant presented

on December 20, 2019 an application to take out life insurance with the

Respondent. This application contained i.a.

the following notes (excerpts,

Formatting not reproduced 1:1):

Declarations of consent to data protection

1. Consent to collect and transfer data

1.1 upon conclusion of contract ☐

All applicants and persons to be insured agree that the insurer, in order to assess whether ☐

and under which conditions this insurance contract is concluded or changed, ☐

personal health data through essential information from the examining or ☐

treating physicians, hospitals, other health care facilities or ☐

Health care, as well as the announced social insurance carriers may determine. ☐

Indispensable information within the meaning of the preceding paragraph is that for evaluating the contract ☐

required information and documents from the doctors and institutions mentioned. This includes the ☐

Medical documents required for this assessment (anamnesis, discharge reports, all ☐

diagnostic findings, infusion sheet, clinical or medical admission and treatment data, whereby in ☐

individual cases, it is possible to suffice even with fewer documents). ☐

3. Consent of the persons to be insured ☐

The persons to be insured agree that the applicant (or the ☐

authorized insurance intermediaries) about possible rejections, risk surcharges or ☐

the content of performance-restricting clauses that refer to the exclusion of existing conditions ☐

(e.g. exclusion due to a spinal disease, allergy,...) informed ☐

may be. ☐

The declarations of consent according to point 1 to point 3 can be withdrawn at any time - also individually ☐

be revoked. ☐

A revocation before the conclusion of the contract can result in the insurer having to review the application ☐

unable to do so and reserves the right to obtain further documents or rejects the application. ☐

In the event of an objection after the conclusion of the contract or if consent is refused in individual cases ☐

the documents required for the benefit case check from applicants, beneficiaries ☐

or to teach the persons to be insured in full. Until receiving all ☐

required documents, claims for benefits cannot be due. ☐

Signed by ☐

Telephone number: +4368*296**☐

TransactionID: *41Wag8x☐

Signature time: 20-12-2019 *2:36:58☐

12/20/2019 IP address: 2*5.589.*9.31☐

Date Mag.Lea A***☐

2. As in point C.1. or taken from the declaration of consent shown below☐

can be, the complainant agreed☐

as part of the application on☐

December 20, 2019 ("Data Use Clause") in the processing of the data mentioned there☐

Data categories for the purpose of market research by processors (point "i"),☐

Satisfaction surveys (item "ii") and for contacting and sending☐

Marketing information within the Y*** group (point "iii") (formatting not 1:1☐

reproduced):☐

General questions☐

1. Data Use Clause: All applicants and the insured(s) Yes No☐

Individual(s) agree that their personal information (title, first☐

and last name, date of birth, address, email address, phone number,☐

Information from the current contractual relationship (such as product,☐

Scope of services, damage reports, segmentations), membership in☐

Y***Bonus***, usage data of the customer portal, apps and others☐

contact channels) for purposes of (i) market research (e.g. corresponding surveys☐

via processors), (ii) satisfaction surveys about our service and☐

Advice and (iii) contact and sending of marketing information☐

and suggestions related to goods and services from the☐

Insurance and financing offer from the Y*** Group (by e-mail, telephone☐

or in the customer portal and apps) from companies in the Y*** Group (Y***Versicherung***,☐

Y***Life insurance***, Y***Pension fund***, Y***Provision fund***, Y***Partner***, Y***Assistance***, ☐

Y***Bank** (both in Vienna) are processed. Under no circumstances will this data be passed on to others ☐

Company passed on or sold as such. This consent can ☐

can be revoked at any time without giving reasons. ☐

I have the following agreement contained in this application in the form of ☐

I have read and agree to the statements and other information. Yes No ☐

2. ☐

3. According to the information that can also be found in the application form (heading "Use ☐

personal data within the framework of the ZIS"), the Respondent appeals ☐

regarding the processing of personal data (specifically: name, date of birth, ☐

Information about the type of report, insurance segment, report case in the form of a ☐

numerical coding, any disclaimer) ☐

within the framework of the center ☐

Information system of the insurance companies in Austria (hereinafter: "ZIS") on the ☐

respect of ☐

interests of the insured community and ☐

participating ☐

Insurance, as shown in the following figure (formatting not 1:1 ☐

reproduced): ☐

Use of personal data within the framework of the ZIS ☐

At the Association of Austrian Insurance Companies, Schwarzenbergplatz 7, 1030 Vienna ☐

by the insurance industry in the areas of health, life and ☐

Disability insurance a central information system for the purpose of coordinated ☐

mutual information between the participating insurance companies for determination ☐

uninsurable risks and to ensure an adjusted contribution and scope of benefits ☐

operated insurance protection. This system is used by us in the line of life insurance ☐

used. To protect the legitimate interests of the insured community and
participating insurance companies, the system is used to identify, monitor and manage the
insurance risks registered with the participating insurance companies. Under certain
Requirements can be met from the signing of the insurance application (also in the case of subsequent
application withdrawal) data of the person to be insured or the insured person in this
information system for a maximum of seven years. These are cases
the permanent or temporary refusal of the insurance application, the potential
Acceptance of the application under difficult conditions and the premature termination of the contract
Due to a breach of the duty of disclosure. This entry includes the name and the
Date of birth, the information whether it is a new, change or cancellation notification
Reporting date, the affected insurance class, the reporting case in the form of a numerical code
and a disclaimer, if any. A query from the information system is
on the occasion of examining an application for taking out insurance and on the occasion of examining a
performance possible. An existing entry for an insured person or person to be insured
can, like any other indication of risk-increasing special features, result in
final examination of the application or benefit case by the insured or to be insured
person additional information must be obtained. It is possible to obtain information about
the data processed in the information network on the person of the information seeker and in the case
the inaccuracy of the processed data to request their correction or deletion or
to object to data processing. In these cases we ask that you contact us at 0*73**1- *115.

4. The application for life insurance was made by the Respondent
rejected as follows in a letter dated February 7, 2020, with an express reference
to the transfer of the complainant's personal data to the ZIS
was included (formatting not reproduced 1:1):
Vienna. on 02/07/2020

L***kasko insurance application number: *84**36821

Dear Mrs. Mag. A***, □

We thank you for the trust you place in us. □

We have carefully checked your application. Unfortunately it turned out. that we □

We cannot offer you the desired insurance cover and we can □

must therefore reject the application □

In this context, we would like to point out that we use your name, your □

date of birth and the fact of the rejection of this application to the central office □

information system of the insurance companies in Austria. This □

Facility is used for mutual information between the participants □

Insurance companies to determine uninsurable risks and to □

Guarantee of an insurance cover adapted to the contribution and scope of services □

in life and disability insurance. □

If you have any questions or concerns, please contact our customer service □

at 0*73**1- *115 or ask***@y***.at. □

We are at your disposal for further insurance questions and advice □

Disposal. □

Evidence assessment: The statements made are based □

primarily on the □

Proceedings by the complainant dated March 31, 2020 and May 8 □

2020, in the course of which the documents mentioned were submitted in copy. This submission □

was fully substantiated by the Respondent in its statement of June 17, 2020 □

confirmed and thus proves to be indisputable. □

5. After the complainant's application was rejected, the name, □

date of birth and the fact of the rejection of the application to the VVO as well as the □

Entry of this data in the ZIS. The fact that the applicant has diabetes □

Type 1 suffers, as well as the exact circumstances that led to the rejection of the application, □

were not noted and are not visible to the querying company. □

The Respondent also did not pass on this information to □

other (insurance) companies. □

6. The ZIS is a central information system for the purpose of □

reciprocal □

information between the □

participating insurance companies, □

which is operated by the VVO. The entry includes the following information: □

Name, date of birth, type of report, affected insurance class, report case in form □

a numeric coding and a possible denial notice, as well as from the □

following representation □

as part of the reporting of the data application □

to the □

Data Processing Register (DVR) of July 1st, 2016: □

A ZIS query is carried out when examining an application to take out insurance □

or on the occasion of a benefit event. □

Evidence assessment: The findings made are based on credible submissions □

of the Respondent of June 17, 2020 and July 23, 2020, in the course of which the above □

shown report to the DVR from July 1, 2016 (DAN no. 00**359/00*) and the □

Registration confirmation from the data protection authority of October 13, 2016 in copy as □

Enclosure ./C were submitted. This was confirmed by an ex officio query of the DVR by the □

Data Protection Authority confirmed on November 18, 2020. Also the complainant, which □

including the notification to the DVR and the confirmation of registration from the data protection authority □

were transmitted as part of the hearing of the parties, has in particular the fact that it □

the complainant's diabetes was not entered in the ZIS □

is, in its Opinion dated September 10, 2020 (ha. received September 14, 2020) □

not disputed. The determination that there is no actual disclosure of the
health-related data of the complainant to others
(insurance
) company has turned out to be credible in that the
submissions of the complainant in this regard, other insurance companies
could possibly get your health-related data on closer examination,
presented as pure conjecture and otherwise no for the data protection authority
related indications.

7. By letter dated February 21, 2020, the complainant sent the following letter

to the Respondent (formatting not reproduced 1:1):

Subject: L *** comprehensive insurance

Application number: *84**36821

Vienna on February 21, 2020

Dear Sir or Madam, I demand an immediate deletion of my data from the central
information system.

Kind regards

Leah A***

8. In a letter dated February 26, 2020, the Respondent replied to the letter

of the complainant as follows (formatting not reproduced 1:1):

> Dear Ms A***,

> Your letter of February 21, 2020 was forwarded to my department,

> As can already be seen from our data protection declaration, the Verband der

Austrian Insurance Company (VVO), Schwarzenbergplatz 7, 1030 Vienna, from the

insurance industry in the field of health, accident and life insurance

Information system (ZIS) for the purpose of coordinated mutual information between the

participating insurance companies to identify uninsurable risks and

Guarantee of an insurance cover adapted to the contribution and scope of services.□

The VVO acts as a processor, the participating insurance companies as□

joint data controllers.□

> This system is used by us - Y*** Versicherung AG - in the division of□

used life insurance. To protect legitimate interests (Article 6 Paragraph 1 lit f□

GDPR) of the community of insured persons and the participating insurance companies□

System for recognizing, monitoring, and managing the data of the participants□

Insurance risks assumed by insurance companies. Under certain circumstances□

can from the signing of the insurance application (also in the case of subsequent□

Application withdrawal) data of the person to be insured or insured in this□

information system for a maximum of seven years. It is about this□

to cases of permanent or temporary refusal of the insurance application, the□

potential acceptance under difficult conditions and premature□

Contract condition due to a breach of the duty of disclosure. The entry□

includes the name and date of birth, the information whether it is a new□

change or cancellation notification, the notification date, the affected□

Insurance division, the reporting case in the form of a numeric code and a□

any denial notice that may have been set. A query from the information system is□

on the occasion of the examination of an application for taking out insurance and on the occasion of□

Examination of an application for taking out insurance and on the occasion of the examination of a□

performance possible.□

>□

> Please note that the registration in the as well as the query from the ZIS with the□

Austrian data protection authority and considered lawful by them□

was classified.□

>□

> For the sake of order, we may note that the nature of the disease is not included in the ZIS

is reported, but only the fact that your application was rejected by us.

The reasons why the application was rejected are therefore not apparent in the ZIS. In

In your case, we have therefore only reported that your application was rejected.

02/26/2020

>

> We are sorry. that we will therefore not comply with your deletion request of February 21, 2020

be able. In any case, the entry will be automatically deleted after seven years.

A deletion or correction of the registration is otherwise only in those cases

possible if the processed data is incorrect.

>

> We are happy to answer any questions you may have.

>

> Kind regards

9. On March 30, 2020, the complainant raised through its law-friendly representative

the complaint in question and sent the following letter to the same day

Respondent (formatting not reproduced 1:1).

Dear Sir or Madam!

First, allow me to indicate that I am with the law-friendly representation

was entrusted by Ms. Mag. Lea A***.

On December 20, 2019, my client sent you an application to conclude a

L***casco insurance provided.

On February 7th, 2020 you rejected the application without justification.

However, in this context, you have the name and date of birth

my client and the fact that the application to the head office was rejected

information system transmitted.

My client suffers from type 1 diabetes□

Apparently the application for life insurance was rejected. That became mine□

However, client discriminated against the principle of equality as a diabetic and□
disadvantaged.□

On February 21, 2020, my client gave her consent to the processing of her□

Revoking data and deleting the data in the central information system□
required.□

With the letter dated February 26, 2010, however, you have the revocation of the further□
processing and the deletion of data relating to my client□

personal data rejected.□

In accordance with the GDPR, my client expressly objects to the further□
processing of their personal data. The further processing of the data is not□
permitted.□

According to Art. 17 GDPR, you as the person responsible are not permitted□
to delete processed data if a data subject requests this. there in□

In the present case, the interest of my client, which is worthy of protection, is the interest of yours□

Haus in the processing of the data exceeds, is the data processing is□
inadmissible.□

So I have to ask you□

until April 14, 2020 at the latest□

to confirm the objection and a sufficient cease-and-desist declaration□

to state that the data will no longer be processed and in the central office□

Information system of the Association of Austrian Insurance Companies□

be deleted as well as the costs of my intervention in the amount of up to now□

a flat rate of EUR 180.00 (including EUR 30.00 at 20% VAT) to my handan□

to my account IBAN AT*7 2011 1*86 14*5 8**3 at *** Bank GmbH□

bring transfer.□

Looking forward to your appropriate cause, I remain□

Kind regards□

10. By letter dated April 7, 2020, the respondent informed the complainant□

with that you□

"for reasons of efficiency" the deletion of the registration□

personal data of the complainant (specifically: name, date of birth and□

fact that their application was rejected) from the ZIS on April 1, 2020.□

Evidence assessment: The statements made are based on the submissions of the□

Appellant of March 31, 2020 and May 6, 2020, in the course of those of the above□

illustrated correspondence□

was submitted in copy. This was through the□

Respondent confirmed in its statement.□

11. The respondent has the data of the complainant during the□

of the complaint procedure in question was deleted from the ZIS on April 1, 2020, as well□

The following screenshot from June 15, 2020 shows (formatting not reproduced 1:1).□

[Editor's note: At this point there is a screenshot of a ZIS query in the original□

Versicherungsverband Österreich reported on the complainant. It contains the□

First name, last name and date of birth of the complainant as well as the□

Process identifier "L". The search result is: no results.]□

Evidence assessment: The statements made are based on the quoted and insofar□

undisputed documents.□

12. The data protection notices on the Respondent's website are correct□

excerpts as follows:□

Special case Central Information System (ZIS)□

At the Association of Austrian Insurance Companies (VVO), Schwarzenbergplatz 7,□

1030 Vienna, is used by the insurance industry in the field of health, accident and insurance□

Life insurance a central information system for the purpose of coordinated□

mutual information between the participating insurance companies□

Identification of uninsurable risks and to ensure a contribution and□

performance-adjusted insurance cover operated. The VVO acts as□

Processors, the participating insurance companies as jointly responsible for□

Responsible for processing.□

This system is used by us in the life insurance segment. For protection□

the legitimate interests (Art 6 Para 1 lit f GDPR) of the insured community and the□

participating insurance companies, the system is used to identify, monitor and□

Manage the received from the participating insurance companies□

insurance risks. Under certain conditions, from the signing of the□

Insurance application (also in the case of subsequent withdrawal of the application) data of the□

insurer or insured person in this information system for a maximum of seven□

years are entered. These are cases of permanent or□

temporary rejection of the insurance application, the potential acceptance of the□

application under difficult conditions and the premature termination of the contract□

a breach of the duty of disclosure. An entry includes the name and the□

Date of birth, the information whether it is a new, change or cancellation notification□

is, the reporting date, the affected insurance segment, the reporting case in the form of a□

numerical coding and a disclaimer, if any. A query□

from the information system is based on the examination of an application□

Insurance conclusion and on the occasion of the examination of a benefit case possible.□

An existing entry for an insured person or person to be insured can, like□

also any other reference to risk-increasing special features, have the consequence that□

for the final examination of the application or benefit case by the insured or to□

additional information must be obtained from the insured person.□

It is possible to obtain information about the person in the information network□

information requester processed data and in the case of inaccuracy of the processed□

to request the correction or deletion of data or to data processing□

contradict. In these cases we ask that you contact us at 0*73**1- *115 or□

datenschutz@y***at.□

The data stored in the system on the person of the insured person or to be insured is for□

Fulfillment of the insurance contract required. If these are not provided, it can□

insurance relationship cannot be established.□

Evidence assessment: The findings made are based on an official query by the□

Respondent's website at https://www.y***.at ("Privacy Policy Y***□

Versicherungs AG") on November 17, 2020.□

D. In legal terms it follows that:□

D.1. General and applicable legislation□

According to Art. 4 Z 1 GDPR, personal data is all information relating to a□

identified or identifiable natural person. indicate health data□

in accordance with Art. 4 Z 15□

leg.cit.□

those data from which□

information about the□

state of health emerge.□

Responsible for data processing is the person or entity who alone or□

together with others about the purposes and means of processing personal data□

Data decides (Article 4 Z 7 GDPR). The processor, on the other hand, is the person or□

Entity that processes personal data on behalf of the controller (Art. 4□

Z 8 leg. cit.).□

The processing of personal data is lawful only if at least

one of the conditions specified in Art. 6 Para. 1 GDPR is fulfilled:

This is the case, for example, if processing pursuant to lit. c leg. cit is required to fulfill a

legal obligation to which the controller is subject. Next to it is one

Processing of personal data is justified if, in accordance with lit. f leg. cit. to the

safeguarding the legitimate interests of the person responsible or a third party,

unless the interests or fundamental rights and freedoms of the data subject who

require the protection of personal data prevail.

The processing of health data is generally prohibited, unless one is mentioned in Art. 9

Para. 2 DSGVO mentioned exception (e.g. the express consent of the

affected person) is available.

In accordance with Art. 17 Para. 1 GDPR, the data subject has the right from the person responsible

to demand the immediate deletion of the personal data concerning you,

if one of the items listed in lit. a to lit. f leg. cit. mentioned reasons apply. This about when the

data for the purposes for which they were collected or otherwise processed

are no longer necessary or the data subject revokes their consent. This is also valid,

if the data subject objects in accordance with Art. 21 leg cit. inserts.

The person responsible provides information to the data subject in accordance with Art. 12 (3) GDPR

on the request pursuant to Art. 17 leg. cit. measures taken immediately, in any case

but within one month of receipt of the application.

According to § 24 para. 6 DSG, a respondent can proceed until the end of the procedure

the data protection authority subsequently eliminate the alleged infringement by

complies with the complainant's requests.

According to § 1 para. 1 DSG everyone has, in particular with regard to the respect of his

Private and family life, right to secrecy of

concerning him

personal data, insofar as there is a legitimate interest in it. The existence□

such an interest is excluded if data as a result of their general□

availability or due to their lack of traceability to the person concerned□

secrecy claim are not accessible.□

As far as the use of personal data is not in the vital interest□

of the person concerned or with his consent, limitations of the right to□

Confidentiality according to paragraph 2 leg. cit only to protect overriding legitimate interests□

another allowed. Even in the case of permissible restrictions, the intervention in the□

fundamental right can only be carried out in the mildest way that leads to the goal.□

According to Section 110 (1) VAG 2016, insurance and reinsurance companies□

set up an effective risk management system that includes all necessary strategies,□

processes and reporting procedures necessary to ensure that the received and□

potential risks, respectively, on an individual and aggregate basis and the mutual□

Recognize, measure, monitor, dependencies between these risks□

manage and report on.□

According to Section 11a (1) VersVG, an insurer may□

in connection with□

Insurance relationships in which the state of health of the insured person or□

of a victim is significant, process personal health data to the extent□

this, for example, to assess whether and under what conditions an insurance contract□

is completed is essential.□

D.2. In the matter□

D.2.a. On the alleged violation of the right to erasure□

As can be seen from the findings, the□

actual deletion of□

personal data of the complainant from the ZIS on April 1, 2020, hence after□

Complaint filed by the complainant on March 30, 2020. She now complains that

the alleged violation of the right to deletion persists, in particular because the

Respondent continues to "insist" on their legal opinion and only cancels the deletion

made for reasons of efficiency. Regardless, got the claimed

Violation of rights existed at least up to the time of actual deletion.

From Art. 77 DSGVO (in conjunction with § 24 DSG) the right can be derived to complain to a

to raise supervisory authority. Although there is a subjective right to erasure (within

of the legal framework), a subjective right to determine that the deletion is too late

has been granted, however, cannot be inferred from this provision (cf. on this

insofar comparable legal situation according to the DSG 2000 the knowledge of

Administrative Court of September 27, 2007, ZI. 2006/06/0330, with further references, and the

Decision of the data protection authority of November 26, 2018, GZ: DSB-D123.223/0007-

DSB/2018). According to § 24 para. 6 DSG, a respondent can until the end of the

Proceedings before the data protection authority subsequently confirmed the alleged infringement

eliminate by complying with the complainant's requests. The procedure will

discontinued if the complainant has been brought to justice. This regulation (which is already mentioned in § 31

Para. 8 DSG 2000 was included) also denies a claim to a finding that

rights have been violated as a result of the late fulfillment of a claim.

The data protection authority thus assumes in its case law that

Legal violations in connection with the right to erasure, this until the end of

procedure first

authority must continue to exist (cf. e.g. the decision of the

Data Protection Authority of February 5, 2019, GZ: DSB-D123.495/0007-DSB/2018). Will the

alleged infringement subsequently eliminated, the original complaint

however - as objective - maintained, the complaint is due to lack of complaint

to reject.

Against this background, the arguments of the complainant prove that□

In addition, there is a violation of law due to the fact that the actual deletion□

was made only for reasons of efficiency than unfounded because it was merely a matter of doing so□

It is important that the deletion was carried out and that the complainant was thus held harmless□

became; on the motivation of the Respondent, which is why the - undisputed - deletion□

was made, however, it does not matter.□

It was therefore - as far as an alleged violation of the right to erasure is concerned -□

to decide accordingly.□

D.2.b. On the alleged violation of the right to secrecy□

At the beginning it is stated that the Respondent - as well as her□

self-proposed - to the person responsible for the data processing in question□

acts, because she is about the registration of the complainant's data in the ZIS and thus□

decides on the purposes and means within the meaning of Art. 4 Z 7 DSGVO. The Association of□

In this context, however, Austrian insurance companies act as□

Processor within the meaning of Art. 4 Z 8 leg. cit. This follows on from the quoted above□

Registration notification to the DVR, in which the Respondent as responsible□

(or according to the terminology of the time "client") appears.□

Incidentally, the□

Responsibility is not disputed or questioned by any party to the proceedings.□

No disclosure of health-related data to third parties□

Both□

The complainant's data entered in the ZIS is□

Undisputedly personal data, which in principle also includes a□

there is a legitimate interest in secrecy within the meaning of Section 1 (1) DSG. Also is the□

The fact that the complainant suffers from diabetes is undoubtedly□

Health data according to Art. 9 Para. 1 GDPR. This information has been□

by the Respondent as part of the examination of the application also within the meaning of Section 11a

Paragraph 1 VersVG processed.

However, it can also be inferred from the findings that this information (i.e. the

illness) were not disclosed when registering with the ZIS, but

merely the fact that the application for the conclusion of an insurance contract was rejected

was noted in the form of a numerical code. Also from this coding

no information about the state of health can be derived, since a rejection

of the application would also be conceivable for other reasons.

In addition, there was no disclosure of health-related data to third parties: The

Appellant submits that other insurance companies at a closer

Checking the background of the registration in the ZIS to the health data of the

complainant could reach. However, that data is actually passed on

were not claimed by the complainant, nor could this be

Data Protection Authority

to be determined. A violation of fundamental rights

Confidentiality, however, can only be determined from an ex-post perspective. That

means a complaint concerning injuries that has not yet manifested itself

have or that could just possibly happen, in the absence of difficulties, success

failed (cf. the decision of the DSB of September 13, 2018, GZ: DSB-D123.070/0005-

DSB/2018).

In a first step, it should therefore be noted that no transfer of

Health data was passed to third parties, with which

as a result on the particular

Exceptions of Art. 9 Para. 2 GDPR could not be considered further.

Legality of data processing within the framework of the ZIS

It should be noted at the outset that in the present case a violation of the right to

Confidentiality according to § 1 Para. 1 DSG is to be checked and restrictions of this

Claim from paragraph 2 leg. cit., but not from Article 6 paragraph 1 GDPR. The GDPR

and in particular the principles enshrined therein are, however, for the interpretation of the

Right to secrecy to be taken into account (cf. the decision of the DSB of 31 October

2018, GZ: DSB-D123.076/0003-DSB/2018).

The processing of the personal data of the complainant did not take place in

their vital interest, nor does the Respondent invoke this

Connection to consent (in the terminology of the GDPR: consent). As

can be inferred from the findings, the consent under data protection law refers to

Essentially on marketing measures and customer satisfaction surveys. It was therefore

also not further on the argument that the complainant had given her consent

revoked on February 21, 2020.

The Respondent submits that it is to be set up in accordance with Section 110 (1) VAG 2016

committed to risk management. Notwithstanding that this one is

Provision for no qualified or sufficiently determined legal basis for the

Data processing in question within the meaning of Section 1 (2) first sentence DSG and Article 6 (1).

lit. e GDPR, the Respondent invokes both in its

data protection notices, as well as in the present complaints procedure, on compliance

overriding legitimate interests of others (§ 1 Para. 2 DSG and Art. 6 Para. 1 lit. f

GDPR), which is why a weighing of interests must be carried out as a result:

On the one hand, the processing must be carried out to protect the legitimate

interests of

Controller or a third party may be required, on the other hand, fundamental rights and

Fundamental freedoms of the data subject, which require the protection of personal data,

do not predominate (cf. on Art. 7 lit. f of Directive 95/46/EC the judgment of the ECJ of

24 November 2011, C-468/10 and C-469/10 [ASNEF and FECEMD] para. 38).

The Respondent explains that the ZIS and the related

Disclosure of the complainant's personal data to others

insurance company

to serve

the

reciprocal

information

the

insurance company

such as

the warranty

one

contributory

and

performance-adjusted insurance cover. The reported cases deal with it

are usually cases of rejection of insurance applications or acceptance under

more difficult conditions or the violation of notification obligations. This serves primarily

the protection of the insured community.

The data protection authority must therefore record this as a first step and has done so

also acknowledged by the complainant that the processing within the framework of the ZIS

without a doubt

to the

interest

another

insurance company

and

the□

Insured community serves because of the reciprocal exchange of information in the form□

made aware of possible risks on a central platform and ultimately that□

The risk of economic disadvantages for third parties is minimized. This also enables the result□

Creation of reasonable or low premiums for insured persons, which also□

interests of customers are traded (cf. Art. 29 Data Protection Group, WP 217 loc.cit. p. 45,□

according to which the circumstance gives more weight to the interest in question if a□

controller not only acts in the commercial interest, but also the processing□

in the□

interest of the wider public□

lies).□

Incidentally, on the part of□

Data protection authority already in the course of registration according to §§ 17 ff DSG 2000□

subject to the proceedings data application subjected to a detailed examination, because□

they according to the legal situation at that time of the prior check (§ 18 Para. 2 Z 4 in conjunction with §§ 20 f DSG 2000)□

lost□

The complainant, on the other hand, submits that the registration in the ZIS was entirely for her□

concrete consequences, namely rejection by other insurance companies and□

the associated lack of insurance cover. In addition to the lack of private□

Retirement provision has the consequence, for example, that in many cases no credit is granted.□

Because diabetes is a disability□

in the meaning of□

Disabled Persons Employment Act would also violate Art. 21 EU-GRC□

violated□

However, the complainant brings with it□

only guesses. that one□

Insurance has actually rejected her because of her illness or she for this reason□

actually received no credit or credit only on difficult terms□

neither presented nor claimed.□

Notwithstanding this, the following should be noted:□

In the context of the balancing of interests, Art. 7 and Art. 8 EU-GRC□

relevant (cf. Heberlein in Ehmann/Selmayr General Data Protection Regulation², Art. 6□

para. 28), but the complainant is to be agreed to the extent that other□

Fundamental rights that require the protection of personal data must be taken into account,□

including the right to non-discrimination on grounds of disability. If the□

Appellant, however, submits that an insurance relationship should not be based on□

be rejected because of a disability, she overlooks the fact that the respondent□

neither a direct influence on the rejection by other insurance companies□

exercises, nor that the examination of this course of action□

otherwise not□

in the□

jurisdiction of the data protection authority.□

The data protection authority does not overlook the fact that this procedure can lead to□

Disadvantage of previously ill affected persons - as in the specific case of the complainant -□

could lead. However, it should be noted that in relation to the rejection of an application□

Various reasons are conceivable for taking out life insurance and□

circumstance of a previous illness is only one of several conceivable motives. Moreover□

the registration of a data subject in the ZIS is not mandatory with a□

subsequent rejection of the conclusion of an insurance relationship.□

Through□

the□

legal□

anchoring□

in□

§ 11a□

Paragraph 1□

VersVG, according to which□

Insurance companies definitely to check the state of health of a□

data subject are authorized, it must also be assumed that the□

In certain case categories, the legislature outweighs the interests of those affected□

legitimate interest of the insurance community - at least in a more detailed one□

Examination and information – see.□

Finally, as part of the balancing of interests, the reasonable expectations of the□

data subject to take into account (cf. recital 47 of the GDPR):□

Given that the Respondent both□

As part of the□

Application as well as before the actual notification repeatedly about the data processing□

informed within the framework of the ZIS, the data processing for the complainant in□

reasonably foreseeable when their personal data is collected and□

just not surprising.□

The processing of personal data in question is therefore lawful and also□

necessary to achieve the desired processing purpose.□

result□

Overall, the data protection authority therefore comes to the conclusion that due to the□

carried out balancing of interests there is no violation of the right to secrecy,□

as the legitimate interests of third parties (insurance community and customers).□

the stated impairments of the legitimate interests of the complainant□

predominate.□

Finally, it should be noted that it is fundamentally possible for a person concerned□

would be, for reasons arising from their particular situation, against the□

Data processing based on Art. 6 (1) lit. f GDPR Objection pursuant to Art. 21 leg. cit.□

to insert However, since this was not the subject of the present appeal proceedings□

or only after a complaint was lodged with a letter dated March 30, 2020 to the□

Respondent was asserted, was not more specific at this point□

enter into.□

It was therefore to be decided accordingly.□