

GZ: DSB-D130.092/0002-DSB/2018 from 21.9.2018□

[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 DPA decides on the complaint of the László A***□

(complainant) of September 4, 2018 against N*** Ges.m.b.H.□

(Respondent) for an injury in unspecified□

Data protection rights, in particular the right to erasure (Article 17 GDPR), as follows:□

- The complaint is rejected.□

Legal basis: Art. 8 of the Federal Constitutional Law (B-VG), Federal Law Gazette No. 1/1930□

idgF, § 13 paragraph 3 of the General Administrative Procedures Act 1991 (AVG), Federal Law Gazette.□

No. 51/1991 as amended.□

REASON□

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

1. The complainant submitted on September 4, 2018 (mail received on the same day).□

submit a submission in English to the data protection authority by e-mail, which□

A copy of a lengthy e-mail correspondence was attached. from the content□

the presumption that the complainant lodged a complaint against the **** in Vienna□

Established N*** Gesellschaft m.b.H. because of a violation of the right to□

Deletion (Article 17 GDPR) intended. Due to other circumstances (no indication of a□

domestic delivery point, use of an e-mail address in the domain□

****mail.co.uk") there is a presumption that the complainant is not a resident□

or has his habitual residence in Austria).□

2. The data protection authority then issued on September 18, 2018 to GZ: DSB-□

D130.092/0001-DSB/2018 the following defect rectification order:□

"Subject: Order to rectify defects□

Your complaint lodged with the Data Protection Authority on September 4, 2018□

proves to be defective and needs improvement for the following reasons:□

~ The complaint is not written in German, which language as□

constitutional official language of the Republic in all submissions□

must be used by Austrian authorities (Article 8 of the Federal□

Constitutional Law - B-VG).□

Please remedy this deficiency by improving the complaint again□

add or add.□

A period of two weeks is set for the fulfillment of this order to remedy defects□

receipt of this letter. If there is no improvement, according to § 13□

Paragraph 3 of the General Administrative Procedures Act 1991 (AVG) with the□

Rejection of the attachment to be expected.□

In the absence of an entry in German, a more extensive one is required□

substantive initial examination of the complaint has not yet taken place.□

For entries, please use the information on the website□

Forms available from the data protection authority: <https://www.dsb.gv.at/dokumente>.□

You are also free to file your complaint (without any financial consequences) in accordance with Section 13 (7) of the□

General Administrative Procedures Act 1991 (AVG) expressly withdraw.□

If necessary, you can also object in accordance with Art. 77 Para. 1 of the data protection□

Basic Regulation (DSGVO) to the supervisory authority responsible for data protection□

their usual place of residence or place of work in the territory of the European Union□

and use a language permitted there. Please share this the□

Austrian data protection authority with you, and at the same time pull the now

pending complaint.”

3. The complainant responded with a submission dated September 20, 2018

replied, which although cites several provisions and recitals of the GDPR

in German, but their arguments addressed to the authority

again written in English. The appellant has thus conclusively

expressed that he insists on submitting his submissions in English

to refund.

4. B. From a legal point of view it follows

5. According to § 13 para. 3 General Administrative Procedures Act 1991 (AVG, BGBl.

No. 51/1991 as amended.) Deficiencies in written attachments do not authorize the authority to

rejection. Rather, the authority has ex officio immediately

to arrange for the defect to be remedied and the defect to be remedied within a

reasonable period of time with the effect that the attachment after fruitless

Expiry of this period will be rejected. If the defect is remedied in good time, then

the application as originally correctly submitted.

6. Written and verbal submissions are generally permitted in German

formulate; as well as with inadmissible, foreign-language entries of

the authority according to § 13 para. 3 AVG (Note B from 15.10.1984,

84/08/0106, VwSlg 11556 A/1984, or E of 19.10.1994, 94/01/0294). in it

neither the accession of Austria to the European Union nor the amendment of § 13

Para. 3 AVG slightly changed (VwGH, E 20.06.2017, Ra 2016/01/0288, RIS, RS 1).

7. The data protection authority also has the complainant in accordance with § 13a AVG about the

Legal position instructed. Art. 77 GDPR states that a data subject

Assertion of their rights in administrative courts the international choice

between several supervisory authorities in the territory of the European Union, viz

that of the habitual residence of the person concerned, their place of work□
or the location of the alleged infringement. Since the Respondent in Vienna□
seems to be established, the latter would be a competence of the Austrian□
justify supervisory authority. However, it cannot be inferred from this that a procedure□
the data protection authority by a party procedurally in another language□
may be applied for and used as the constitutional official language. Much more□
the alternative submission authorities should give a data subject the possibility□
open up to contact a geographically closer supervisory authority whose□
official language she is familiar with.□

8. The complainant has, despite the opportunity (in the form of a□
defect rectification order) does not eliminate the determined defect.□

9. The application made in the present form is therefore not compliant with the law. the□

The complaint was therefore, as announced, according to § 13 para. 3 AVG□
to reject.□