

[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 within the framework of an official examination procedure□

against the B\*\*\*\*\* automobile club regarding data protection consent as follows:□

1. The official examination procedure was justified and it is determined that the□

Form "I will become a new B\*\*\*\*\* automobile club member" of the B\*\*\*\*\*□

Automobile clubs in the section "Information & data protection: Data protection law□

CONSENT according to Article 6 Paragraph 1 lit a GDPR for marketing purposes".□

complies with the requirements of the GDPR.□

2. The B\*\*\*\*\* automobile club is charged within a period of three□

Months otherwise execution his "data protection consent□

according to Article 6 Paragraph 1 lit. a GDPR for marketing purposes" the legal□

adapt to requirements.□

Legal basis: Article 4 no. 11, Article 7 paragraph 2, Article 57 paragraph 1 letter h and Article 58 paragraph 2 letter d□

of Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR), OJ No. L 199□

p. 1□

A. Procedure□

REASON□

The DPA removed the section "Information & Privacy:□

CONSENT under data protection law in accordance with Article 6 (1) (a) GDPR□

Marketing purposes" in the form "I will become a new B\*\*\*\*\*-Automobilclub member" of the

B\*\*\*\*\* automobile clubs to initiate an ex officio test procedure, since the

There was a suspicion that this section did not meet the data protection requirements of the

DSGVO correspond.

The B\*\*\*\*\* automobile club replied in its statement of June 25, 2018 in the

Essentially, that the procedural section meets the criteria of the GDPR

correspond to In particular, the consent in question is designed in such a way that the

data subject can decide by ticking the boxes provided

whether and in what form they would like to receive marketing mailings. Also be the

pre-formulated declaration of consent clearly structured and therefore corresponding

of the GDPR in a comprehensible and easily accessible form.

B. Subject of the proceedings

Based on the above argument, it follows that the subject of the proceedings in

This ex officio test procedure the question is whether the B \*\*\*\*\* automobile club its

Pre-formulated declaration of consent drawn up in accordance with the requirements of the GDPR

has.

C. Findings of Facts

The B\*\*\*\*\* Automobile Club sent out recruiting forms to its members

new members.

The form is divided into two parts. The first part contains personal

Data of the member himself, the second part is with "I will be a new B\*\*\*\*\* automobile club

Member" and is used to collect personal data of new members.

In the second part of the form, under the "Information and

Data protection" following passage (format and typeface not true to the original

reproduced):

"Data protection consent in accordance with Article 6 Paragraph 1 lit a GDPR

Marketing purposes: I consent to the B\*\*\*\*\* automobile club my ☐

personal data (first name, surname, club card number, address, ☐

telephone number, e-mail address) for the purpose of sending/notifying information ☐

about new offers, products and services such as in particular about S\*\*\*\*\*, ☐

Club items, driving safety training, R\*\*\*\*\* and V\*\*\*\*\* products ☐

Oh by mail ☐

O by electronic means of transmission ☐

Oh by phone ☐

processed and sent to the national associations of the B\*\*\*\*\*-Automobilclub\* and the others ☐

Companies in the B\*\*\*\*\*-Automobilclub-Verbund\*\* (incl. B\*\*\*\*\*-Automobilclub GmbH) for ☐

transmitted for these purposes. The use of the data to provide the services ☐

Membership and S\*\*\*\*\* is independent of this consent. ☐

Withdrawal: I can revoke this consent at any time by email to [widerruf@b\\*\\*\\*\\*\\*-](mailto:widerruf@b*****-automobilclub.at) ☐

automobilclub.at or letter to B\*\*\*\*\*-Automobilclub, 1\*\*0 Vienna, X\*\*y\*\*Zstraße 2\* ☐

withdraw. By withdrawing your consent, the legality of the up to ☐

Revocation does not affect the processing that has taken place." ☐

Below that is a new section that applies to the entire form, with ☐

a text field for date and signature. ☐

Evidence assessment: The findings are based on the results of the ☐

investigation procedure, in particular on the procedural form of the ☐

B\*\*\*\*\* automobile clubs themselves. ☐

D. In legal terms it follows that: ☐

In the present case, the B\*\*\*\*\* automobile club uses in its ☐

Form a pre-formulated declaration of consent. With such a ☐

The declaration of consent is a consent under data protection law ☐

Art. 4 Z 11 GDPR (emphasis added by the data protection authority): ☐

## Article 4

### definitions

For the purposes of this Regulation, the term means:

[...]

11. "Consent" of the data subject any voluntary for the specific case, in informed manner and unequivocally given expression of will in the form of a Statement or other unequivocal affirmative action by which the the data subject indicates that they are compliant with the processing of data concerning them agrees to personal data;

Art. 7 GDPR standardizes the conditions for GDPR-compliant consent and reads as follows (emphasis added by the Data Protection Authority):

## Article 7

### Consent Conditions

(1) If the processing is based on consent, the person responsible must prove it can that the data subject in the processing of their personal data has consented.

(2) If the data subject gives his/her consent in the form of a written declaration concerns other matters, the request for consent to understandable and easily accessible form in a clear and simple language like that be made that it is clearly distinguishable from the other facts. parts of Declaration are then not binding if they violate this represent regulation.

(3) The data subject has the right to revoke their consent at any time. Through the withdrawal of consent will invalidate the legality of the consent processing that took place up until the revocation is not affected. The person concerned will informed of the submission of consent. The withdrawal of consent

must be as simple as giving consent.□

(4) When assessing whether consent was given voluntarily, the circumstance in□

to the greatest extent possible, whether, among other things, the fulfillment□

of a contract, including the provision of a service, from which□

Consent to processing of personal data is dependent□

are not required for the performance of the contract.□

The following criteria for a DSGVO-□

derive compliant consent: voluntariness, specificity, information, comprehensibility,□

easy accessibility, clear and simple language.□

In the case at hand, the criterion of comprehensibility is primary□

dubious:□

Since this is a written declaration of consent, Art. 7 Para. 2 Sentence 1□

GDPR applies and the request for consent must therefore be in an understandable and□

easily accessible form, in clear and simple language in such a way that it is□

clearly distinguishable from the other circumstances. The B\*\*\*\*\*-□

Automobile club itself correctly in its statement that a pre-formulated□

The declaration of consent should be clear and concise.□

The subject matter is the pre-formulated declaration of consent of the B\*\*\*\*\* automobile club□

however, in a form that gives the data subject the impression that□

only being able to decide through which medium you want to receive marketing mailings□

would like to receive, namely by post, by electronic means of transmission or by□

Phone.□

In addition, the general structure of the form, specifically, supports the placement of the□

Declaration of consent according to Article 6 Paragraph 1 lit. a GDPR directly before the signature, which□

confirming the registration for membership contributes to further ambiguity. The affected□

Individual can give the optional consent to the processing of personal data□

for marketing purposes as a mandatory part of the form and

assume that for membership also consent to such

Processing is necessary because the signature of the data subject only after this

text passage is set.

Also through the reference to the

With the possibility of revocation, the impression is given that data processing is allowed

In any case, having to agree to marketing purposes and only through the possibility of one

revocation to be able to prevent data processing for such purposes ("opt-out"

solution which is not permitted by the GDPR; cf. Buchner/Kuhling in

Kühling/Buchner, General Data Protection Regulation<sup>1</sup> (comment) Art. 7 margin no. 26).

As a consequence, such consent is also voluntary

questionable.

As the B\*\*\*\*\* automobile club also correctly explains here, consent is then

granted voluntarily if the data subject can freely decide whether and in what form

she agrees to the data processing that is the subject of the consent. Since that

This form offers a choice as to whether the data subject is at all

consents to the processing of their personal data for marketing purposes

or not, not explicitly contains and through the placement of the procedural

Text passage before the signature field suggests that the signature also

at the same time constitutes consent in accordance with Article 6 (1) (a) GDPR, is from the perspective of

Data Protection Authority also not given the element of voluntariness.

The form of the B\*\*\*\*\* automobile club that is the subject of the proceedings therefore does not correspond

the requirements of Art. 7 Para. 2 in conjunction with Art. 4 Z 11 GDPR and was the data protection authority

therefore in accordance with Art. 52 (2) lit. d GDPR

obviously meant Art. 58 Para. 2 lit. d GDPR] for the production of the legally compliant

entitled to instruct the B\*\*\*\*\* automobile club within a set period,

his pre-formulated declaration of consent in accordance with the provisions of the GDPR□

to adjust.□

A period of three months seems appropriate, the declaration of consent□

to adjust.□