GZ: DSB-D124.567/0005-DSB/2019 from 1.10.2019

[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 the data protection complaint of the Arno A***

(Appellant) of April 8, 2019 against Sparkasse N*** (Respondent)

due to violation of the right to erasure as follows:

1. The complaint is upheld and it is established that the

Respondent thereby waives the right of the complainant

deletion by complying with the complainant's request for deletion

has not complied.

2. The Respondent is charged within a period of 4 weeks

in the case of other execution, to comply with the request for deletion and the

Complainant, as well as the data protection authority from the deletion of the

to inform in writing of the entry in the warning list that is the subject of the proceedings.

Legal basis: Section 39 (2) Banking Act (BWG), Federal Law Gazette No. 532/1993 as amended

(Editor's note: in the original as a result of an editorial error as part I of the

Federal Law Gazette quoted); Article 5, Article 6(1)(f), Article 17, Article 57(1)(f), Article 58

Paragraph 2 lit. c and Article 77 Paragraph 1 of the General Data Protection Regulation - GDPR,

OJ No L 119 of 04/05/2016, p.1; Section 24 (1) and (5) of the Data Protection Act - DSG,

Federal Law Gazette I No. 165/1999 as amended.

REASON

A. Submissions of the parties and course of the proceedings

1. With a submission dated April 8, 2019, the complainant alleges a violation in

Right to erasure and summarizes that the Respondent

there would be an internal negative entry about him. He has by means of a

Letter from consumer protection (Vorarlberg Chamber of Labor) to

Respondent requested the deletion, whereby the deletion was rejected.

However, the complainant had not been proven that he was the polluter

was, the registered claim was also statute-barred and he was by the

Warning list entry affected because his new bank told him he didn't have one

overdraft facility and cannot conclude any financing. From these

Reasons he requests the deletion of the warning list entry. connected to the input

was a letter from AK Vorarlberg to the respondent dated March 21, 2019 and

a response from the Respondent to the AK Vorarlberg dated March 22, 2019, according to which

the entry in the warning list was correct, according to the Respondent's internal notes,

the claim of ATS 73,023, - s.A. on September 25, 1984 to a collection agency

handed over and written off as uncollectible on February 17, 1987.

Furthermore, it was stated that the complainant about a deletion

contact the data protection authority.

2. Requested for comments by the Data Protection Authority, the repeated

By letter dated June 4, 2019, the Respondent reiterated its position as in the letter

executed the Chamber of Labor and informed in summary that they

Warning list entry to be correct. The applicant, together with Mrs Alice

A*** the loan 00*003-*5*2*7 with originally ATS 70,000.00 on February 24, 1984

recorded. The matter was handed over for collection on September 25, 1984

been. In 1985 the claim amounted to ATS 73,023.00 s.A. as irrecoverable

been fully booked. By resolution of November 16, 2015, Ms. Alice A*** was the

discharge of residual debt has been granted. The complainant never attempted to take care of that

to take care of open liabilities, which is why the claim is still upheld.

3. Upon additional request and objection from the data protection authority, the

Respondent also states with a statement of July 15, 2019 that in the year

1985 the claim of ATS 73,023, - s.A. was written off as irrecoverable and

no further enforcement measures had been taken. The claim has been statute-barred since 2015

and there would be no events inhibiting or interrupting the statute of limitations. on

Demand from the data protection authority to what extent the original credit claim

reduced from ATS 70,000 through the decision to discharge Alice A*** of residual debt

had been, the Respondent stated that no documents on the insolvency of the

Alice A*** are present. At the request of the Data Protection Authority, the credit agreement

and to transmit the letter of the total due date of the loan claim, gave the

Respondent states that there are no internal documents, only internal ones

Notes. A copy of the internal notes have been submitted to the Data Protection Authority.

4. With a statement dated July 25, 2019, the complainant made his

party membership and summarized that he had no

credit agreement had been submitted. In the spring of 1984 he was back in Styria

moved while his wife remained in Vienna. Despite neat

The bank and the collection agency would not have contacted him at any time if he had registered his place of residence.

Until recently, he didn't know anything about a loan and only got through one

Hear about it from his bank. He could not remember ever having such a thing

to have concluded a loan agreement. The warning list entry is wrong because

the alleged financing has not been proven to date and he has never participated in the

(Note from the data protection authority: in the internal notes).

H****strasse *3/4/02, **** Vienna usual. The bank is subject to a mix-up. One

any justified claim would also be time-barred. Furthermore, the written

Wrong documentation, he also never lived in J***allee *3*/5, **** Vienna, he

have never had several creditors and have never been persecuted by them and have

furthermore never been addicted to drugs. It will therefore be about the deletion of the

Warning list entry requested.

5. By statement dated August 13, 2019, the complainant responded

the Respondent's supplementary statement from his party hearing

use and also added that it was unusual to use a

Credit claim in this amount after one year and not in court

to assert. He never received a due date or request for payment.

The claim is already statute-barred. He could go to the bankruptcy of his ex-wife

not give an opinion. He has never had a business relationship with

had respondent. A signed loan agreement was never presented

and he was never informed of his guilt. He doesn't remember it

ever to have entered into such a credit agreement. Also in KSV 1870

there was never a negative entry by the Respondent. Because of this

Submissions will therefore request the immediate deletion of the false, as well as not

entitled as well as possibly statute-barred entries.

B. Subject of Complaint

The object of the complaint is the question of whether the respondents

Complainant thereby violated his right to erasure by sending the

The complainant's request for deletion has not been complied with.

C. Findings of Facts

1. At the instigation of the Respondent, the following entry is made in the "Warning list

of the banks" about the complainant:

[Editor's note: The original as a graphic file (facsimile of a printout)

reproduced warning list entry can not with reasonable effort

be pseudonymised; it is reproduced here as a text entry.]

Identification number: *3*2*4*1 Bank code: ***9*1

Title: Account number: 00*003-*5*2*7

First name: Arno Registration: 03.2000

Surname: A*** Denial:

Street: H****straße *3/4/02 repayment agreement:

ZIP/City **** Vienna Repayment:

Date of birth: 10/04/1964

Warning symbol: K06 credit account up to 6000 EUR

There are no other entries by the complainant in the “banks warning list”

available about the complainant.

2. The entry in the "warning list of the banks" mentioned under point 1 is justified by the

Respondent with a non-repayment of the original loan

ATS 70,000.00 (equivalent to € 5087.01), whereby the loan was taken out on February 24th

1984 under credit number 00*003-*5*2*7 by the complainant and his

former wife, Alice A***, is said to have taken place. According to the Respondent, none was

single installment has been paid and the matter came to an end on September 25, 1984

handed over to the collection agency.

3. The loan agreement and the letter calling in the loan (and thus

usually linked the information to the entry in the "warning list of the banks"

(cf. notification of the DSK to Zl. K095.014/021-DSK/2001, clause 2.)

could not be presented by the Respondent. From the complainant

was both the borrowing and the receipt of an information letter

Entry in the "warning list of the banks" denied in any case. Only the following “internal

Note" was submitted by the Respondent as evidence:

[Editor's note: The original as a graphic file (facsimile of an index card to

a credit account with endorsements) internal note can be with reasonable

Effort will not be pseudonymised. It contains notes, e.g. regarding a

alleged relocation, which the complainant disputed in relation to his person

of couple A*** within Vienna. The (full) collectibility of the loan is further

presented as doubtful, a note reads: "EWB 12/84". The debtors are

"unemployed", would be persecuted by their "numerous creditors" and would be classified as

"addicted to drugs". A final (handwritten) entry reads: “Account

closed! 27.2.87"]

Evidence assessment: The findings result from what is undisputed in this respect

Party submissions, as well as from the transmitted warning list entry and the transmitted

internal note. On the note provided are account number, loan amount and names

A*** Arno and Alice listed. The complainant states in the spring of 1984 - that is, briefly

after the time the loan was taken out - to have moved back to Styria.

In this regard, it does not seem entirely impossible that the Respondent

the collection agency could not contact the complainant. The fact that no

Credit agreement no longer exists does not necessarily mean that there is no credit

was completed.

4. The Respondent posted the claim of ATS 73,023.00 s.A. (converted

€ 5306.69) in 1985 as irrecoverable. Judicial enforcement measures existed

it at no time.

Evidence assessment: This finding results from the credible submissions of the

Respondent and from note EWB (individual value adjustment) 12/84.

5. No payments were made by the complainant in respect of loan 00*003-

*5*2*7 done.

Evidence assessment: These findings result from the credible submissions

of the Respondent, which was also not disputed in this respect. the

Complainant denies ever having concluded a loan agreement,

which is why he consequently never made any payments. Ms. Alice A*** is by resolution per

11/16/2015 the residual debt exemption was granted. Whether and if so, which ones

Payments from the insolvency of Mrs. Alice A*** could have reduced the debt

cannot be determined. Since the Respondent states that no documents relating to

If Alice A*** is insolvent, it would be obvious that there would be no related bankruptcy either

Claim registration was made by the Respondent.

6. By letter dated March 21, 2019, the complainant, represented by the

Consumer advice from AK Vorarlberg, a request for deletion to the

Respondent. In a letter dated March 22, the Respondent informed

not wanting to comply with the request for deletion.

D. In legal terms it follows that:

D.1. General information on the processing of data for the purposes of creditor protection and

Risk minimization in the banks' warning list:

a. In the absence of special rules, the general principles of the GDPR apply,

according to which personal data is only used for specified, clear and

legitimate purposes and in a lawful and reasonable manner, fairly and fairly

belief, factually correct and up-to-date may be processed (cf.

Art. 5 GDPR).

b. It should be noted at the outset that the “bank warning list” is for purposes

data application guided by creditor protection and risk minimization

of Austrian credit institutions ("bank warning list"), from which the participating

Banks can see a warning about customer behavior that is in breach of contract

(cf. in particular the decision of the former data protection commission of 23

November 2001, GZ K095.014/021-DSK/2001, with which the registration of

Data application in DVR approved subject to prior checking

would).

c. The data protection authority also recognizes this after the GDPR and the DSG came into force

the legitimate interest of credit institutions a data application for purposes of

creditor protection and risk minimization and registrations

to make or query, especially since credit institutions according to § 39 para. 2 BWG for the

Recording, assessment, control and monitoring of banking and

banking risks through administrative, accounting and control procedures

have the type, scope and complexity of the operated

Banking transactions are appropriate, whereby § 39 Para. 2b BWG expressly states that

the procedures pursuant to Section 39 (2) BWG, including the credit risk and

Counterparty default risk have to be taken into account (see similar notice of

Data protection authority from July 31, 2018 to Zl. D122.943/0008-DSB/2018).

i.e. The subject of the proceedings is, in particular, the question of whether and, if so,

how long an alleged non-contractual customer behavior for the purpose of

Creditor protection and risk minimization may be processed before it is for the

Purposes of processing, i.e. in particular creditor protection and

Risk minimization in lending, is no longer required for the purpose. Only if the

personal data lawfully in compliance with the principle of good faith

faith are processed, are still required for the purpose and kept up to date and

the legitimate interests of the credit institutions as part of a weighing of interests

predominate, processing in the “bank warning list” is permitted.

D.2. In the matter:

a. Initially, the data protection authority states that in view of the established

Facts have already raised considerable doubts as to whether the processing

physical personal data based on the principle of good faith

is equivalent to. The Respondent could neither submit the loan agreement nor that

Letter repaying the loan and the information for entry in the

“Banks Warning List”). In this context, the data protection authority refers to

the decisions of the Supreme Court on line 6 Ob 247/08d and in particular line 6 Ob 275/05t

("Warning list of the banks") regarding the already anchored in § 6 para. 1 Z 1 DSG 2000

Principle of good faith use of data, according to which a

relevant information to those affected prior to entry in the warning list

In any case, banks are required to offer them the opportunity to take action against the

to defend against processing. Without such notification, the

Entry unlawful despite fundamentally legitimate interests of creditors. Because of

the principle of good faith, which is also anchored in Article 5 (1) (a) GDPR,

this case law is also relevant under the new legal situation of the GDPR (cf.

similar decision of the data protection authority of July 31, 2018 to Zl. D122.943/0008-

DSB/2018). According to Art. 5 Para. 2 GDPR, the person responsible is also responsible

obliged to comply with the principles of processing personal data

to be able to prove. Even if it cannot be determined with absolute certainty

could whether information to the person concerned to enter in the warning list of the

Banks, and thus processing in accordance with trust and

Belief was made, it seems justified, the lack of evidence of this

information in the weighing of interests in favor of the data subject.

b. Even if one assumes that the entry in question in

compliance with the principle of fair processing

is, has an evaluation and weighting of the legitimate interests of the

Complainant to take place and are these the legitimate interests of

confront the respondent and third parties. Art. 6 (1) lit. f GDPR

namely two cumulative conditions: Firstly, the processing must

Protection of the legitimate interests of the person responsible or a third party is required

on the other hand, the fundamental rights and freedoms of the data subject who

require the protection of personal data (see Art. 7 lit. f of the

Directive 95/46/EC the judgment of the ECJ of November 24, 2011, C-468/10 and C-

469/10 [ASNEF and FECEMD] para. 38).

c. The data protection authority has dealt with the question of how long entries for creditworthiness purposes

may be stored in a creditworthiness database, already with the notification of

7 December 2018, GZ DSB-D123.193/0003-DSB/2018 and

executed the following:

“A statutory time limit, like long entries in credit bureau databases

may be saved does not exist.

In decision GZ K600.033-018/0002-DVR/2007, the data protection commission

"Small credit evidence (consumer credit evidence) for the purpose of creditor protection and

Risk minimization” on the legal situation before the GDPR came into force with regard to the deletion of all

Entries in connection with a specific loan obligation, including the condition

granted that such seven years after repayment of the debt or occurrence of another

debt-discharging event has to take place.

Finally, it follows from § 256 para. 1 Insolvency Code (IO) that those data in the

edict file to be included, which is to be made public according to the IO

(bankruptcy file). § 256 para. 2 IO also states that the insight into the

Insolvency file is then no longer to be granted if a year has passed since

- the cancellation of the insolvency proceedings according to §§ 123a, 123b and 139 (Z 1),

- the expiry of the payment period provided for in the restructuring plan, if this is not fulfilled

is monitored (Z 2),

- the termination or suspension of the monitoring of the restructuring plan (Z 3),

- the expiry of the payment period provided for in the payment plan (Z 4) or

- the premature suspension or termination of the skimming procedure (Z 5).

In addition, access to the insolvency file is also possible at the request of the debtor

no longer to be granted if the reorganization plan or payment plan has been legally confirmed

has been fulfilled (paragraph 3 leg. cit.).

According to § 256 Para. 4 IO, inspection of the entry is cost-covering in the absence of it

assets or insolvency proceedings not opened due to lack of assets according to Section 68

no longer be granted three years after registration.

5. A uniform standard, from which a general deadline for the deletion of the

creditworthiness-related data from the database of a credit agency after repayment of the

resulting in debt cannot be seen. Rather, a case-by-case assessment seems to be below

to be necessary taking into account all relevant circumstances.

The following circumstances can be decisive for the assessment:

- the amount of the individual claims,

- the "age" of the claims (thus the date of entry in the database),

- Number of claims collected through a debt collection agency,

- the time that has elapsed since a claim was settled.

The origin of the data must also be taken into account.

Is information from a public register, such as the bankruptcy file, in the

Database processed by the credit bureau, account will be taken of how long these

Information must and can appear in the respective public register

Special provisions provide an indication of the storage period of the data.

The one derived from historical "payment experience data" (negative entries).

supposedly poor creditworthiness of those affected is to be replaced by the possibility of a timely

Deletion after all claims have been settled. In particular should

be avoided that sufferers after lifting a

debt settlement procedure or after paying their debts outside of the

insolvency proceedings have regained a solid financial basis, in business

Traffic recently struggled because their credit rating went through

these negative entries will be reduced. A general deletion of the creditworthiness-relevant

Data only seven years after the debt has been repaid is, with regard to Art. 6 Para. 1 lit. f

GDPR, but especially with regard to since the date of the issuance of the above

The legal situation has changed according to the decision of the data protection commission cited (cf. the cited

Provisions of the IO) in any case not be proportionate.

The data protection authority therefore sees itself compelled, from its i.a. in the decision

GZ: K600.033-018/0002-DVR/2007 on "Small credit evidence (consumer credit evidence) on

Purpose of protecting creditors and minimizing risk".

retention period."

Basically, these considerations can also apply to the case in question

connection with entries in the "warning list of the banks".

i.e. The complainant submits that his legitimate interests are protected by the

Entry of a statute-barred claim from 1984 that was written off shortly thereafter

in the "banks warning list" would be affected and thus the economic

would make the complainant's progress more difficult. have his house bank

due to the warning list entry in question, an overdraft limit and

denied funding. On the other hand, there is the interest of the Respondent

and any third parties, the entry in the "warning list of the

Banks" for the purpose of protecting creditors.

e. In principle, a past insolvency provides an essential basis

for the credit rating. So the consideration of payment defaults in the

recent past required to provide a complete picture of the creditworthiness of a

specific person and can be based on past payment defaults

a conclusion can also be drawn regarding future solvency (cf.

the decision of the data protection authority of May 20, 2019, GZ DSB-D123.828/0001-

DSB/2019).

f. As part of the assessment of whether the payment history data should be deleted, im

With regard to the case law of the data protection authority cited above, all circumstances of the

to be considered on a case-by-case basis. According to the available internal notes, no

only payment made in relation to the claim in question, but could

Conversely, not be proven with the necessary certainty that information and

a total call-off of the claim actually to the complainant

were handed out. Even if one assumes that a past

Insolvency has basically existed, but the question arises as to whether and

if necessary, which "credit rating" from a 35-year-old outstanding

claim can be derived, especially since it is the complainant's only entry in

the warning list of the banks and the amount is equivalent to € 5306.69 s.A.

is relatively low. According to the data protection authority,

Payment history data used for creditor protection and

Risk minimization are processed to provide a picture of the creditworthiness that is as up-to-date as possible.

This appears to be in the essential interests of both creditors and debtors.

Negative payment experiences from a long time ago can prevent access to credit

or make advance payments impossible or more expensive without there being another

There is objective justification because the creditworthiness has not improved over the course of 35 years

may have changed insignificantly. Only current data or recent payment experiences

allow a correct assessment and are within the meaning of Art. 5 Para. 1 lit. d DSGVO

factually correct and up to date. At 35 years old

In any case, there can be no question of payment experience data being suitable

would be to give an up-to-date picture of reality. Finally, it should be noted that

in the event of a judicial assertion of the claim, the complainant with

Security bordering probability with the plea of the statute of limitations

would, since the lender's claim for repayment of the loan value before the 30-

year limitation period of § 1478 ABGB must be asserted. the

Respondent himself admits that the claim is time-barred and none

process-inhibiting or interrupting events are present.

G. The Data Protection Authority therefore takes the view that the

Complaint entry of the Respondent in the "warning list of the

Banks" is no longer appropriate and therefore not (anymore) legal,

which is why the deletion had to be ordered. In addition, the legitimate interests

of the complainant from the above considerations a disproportionately higher priority

to grant, as the possibly still existing after the long time entitled

interests of the respondent or third parties.

H. Since the Respondent refused to delete the warning list entry,

to instruct the Respondent in accordance with Article 58 (2) (c) GDPR to accept the request of the

to comply with the complainant.

It was therefore to be decided accordingly.