GZ: DSB-D123.193/0003-DSB/2018 from December 7th, 2018

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

Addresses (incl. URLs, IP and e-mail addresses), file numbers (and the like), etc.,

as well as their initials and abbreviations can be used for pseudonymization reasons

be abbreviated and/or modified. 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 Adelheid A***

(complainant) of July 11, 2018 against N*** Wirtschaftsauskunftsdienst GmbH

(Respondent) for violation of the right to erasure as follows:

1. The complaint is partially upheld and it is found that the

Respondent thereby waives the right of the complainant

Deletion violated by already settled on February 27, 2013

Claim in the amount of 497.07 euros not from their creditworthiness database

deleted.

2. The complaint is made regarding an alleged violation of the right to

Deletion in relation to the claim settled on April 15, 2018 in the amount

of EUR 481.34 and those in the complainant's database

information from the bankruptcy file (edict file) that appeared.

3. The Respondent is instructed within a period of two

Weeks in other execution the request for deletion

to comply with the complainant and the data mentioned in paragraph 1

to delete.

Legal basis: Section 24 (1) and (5) of the Data Protection Act – DSG, Federal Law Gazette I

No. 165/1999 as amended; Article 5 paragraph 1 letter b, Article 6 paragraph 1 letter f, Article 17 paragraph 1 letter a and letter

lit. c of the General Data Protection Regulation – GDPR, OJ No. L 119 of 04.05.2016, p. 1.

REASON

A. Submissions of the parties and course of the proceedings

1. With a letter dated July 11, 2018 initiating the procedure, the

complainant a violation of the right to erasure pursuant to Art. 17 GDPR and

essentially stated that on June 11, 2018 she had a request for deletion

their personal data to the respondent. Because the listed

data is no longer up-to-date, they request that all creditworthiness-relevant data be included

With the exception of the name, date of birth and current residential address.

She has paid off 100% of her debts as part of a payment plan and would like to

now economically - in all reasonableness start from the beginning. The Respondent has

responded by letter dated June 12, 2018, stating that in relation to the

relevant entries no indications for the inaccuracy of the

registration or the inadmissibility of the processing could have been found.

According to the provisions of the GDPR, I therefore have no deletion or rectification

of the data to take place.

2. With a statement dated August 27, 2018, the Respondent led

summarized from, the "very strange" request for deletion of the complainant

can only be understood to mean that these mean the personal

Data are used for the purposes for which they were collected or otherwise processed

were no longer necessary (Art. 17 Para. 1 lit. a GDPR) or the

personal data would be processed unlawfully (Art. 17 para. 1 lit. d

GDPR).

Data protection legal basis for the processing of creditworthiness-related data

personal data in the Respondent's identity and creditworthiness database

are overriding legitimate interests according to Art. 6 Para. 1 lit. f GDPR. the

there are overriding legitimate interests on the part of third parties, namely the in□

Companies in the banking industry that make advance payments. Basically save the□

Respondent personal data only as long as a legitimate purpose for their□

processing exist. As long as the data is therefore necessary for the assessment of identity or□

creditworthiness are relevant, the purpose of the processing continues. The longer one□

Payment experience entry is in the past, the smaller the amount is and ever□

If there were less other payment history data on a person, the sooner□

it can be assumed that the specific entry is not related to creditworthiness□

Statements (more) could be deduced. Also already paid (“positively settled”)□

Receivables would represent data relevant to creditworthiness. The fact that a□

Demand only after a qualified reminder or operation by collection agencies or□

Lawyers had been settled, means at least a temporary one□

Default and thus result in a credit risk with regard to future□

legal transactions. To give a factually correct and complete picture of a person□

to convey stored, creditworthiness-relevant data and thus the principle of□

It is therefore important to ensure data accuracy in accordance with Art. 5 (1) (d) GDPR□

claims that have already been paid remain in the N*** database.□

The stored payment experience data of the complainant led to□

Respondent in detail from: The claim for EUR 4,007.97 (origin: B***□

Mobilfunk GmbH) has meanwhile been noted as "positively completed" (= paid). Because of□

own deletion rules agreed with the claim creditor B*** Mobilfunk GmbH,□

this claim has since been deleted. In addition, there is one more□

Claim for 481.34 euros (origin: C*** Inkasso Gesellschaft m.b.H.), which also□

has since been confirmed as "positively settled". Likewise, there is one□

Receivable for 497.07 euros (origin: D*** Inkasso GmbH & Co KG), which also as□

"positively done" appears in the database. On the last two claims would□

Respondent's standard deletion rules apply. this

means that the claims are still considered due to their considerable amount

are to be considered relevant to creditworthiness. It is therefore an upright processing purpose

exists, which is why neither Article 17 (2) (a) nor Article 17 (d) GDPR

deletion has to take place. Other reasons for deletion are on the part of

Appellant have not been put forward and would not exist.

Information stored in the edict file is an evasion of Section 256 Paragraph 1 Z 4 IO

to a debt settlement process one year after the end of the payment schedule

intended payment deadline can be viewed. According to the edict file, im

Debt settlement procedure to AZ *6 S *4/13x, BG H***stadt, a payment plan with

End of the payment period on April 15, 2018. Sohin be yourself in the

unconditionally viewable edict file the subject

Debt settlement procedure still available until April 15, 2019. This

Circumstance of public visibility is in the weighing of interests according to Art. 6 Para. 1 lit. f

DSGVO to be considered in any case: An interest that data from everyone

could be accessed online, not also processed by the Respondent

should be, is not recognizable.

Even after the end of April 15, 2019, the data from the mentioned

Debt settlement procedure Processing purpose and legal basis: Also a

historic debt settlement process ceases for a period of time

Date relevant to creditworthiness, since previous financial conduct has resulted in a

person can draw conclusions about future payment behavior.

The Respondent agrees to the Complainant only with her

current registration address as well as the correct date of birth and full name

to save. The name will be "Adelheid Lina A***" and the date of birth *3.*1.19**

maintained, as in the complainant's letter of April 25, 2018

transmitted ID copy visible. The current registration address in the ZMR

designated uses.

3. The complainant has commented on the further results of the

preliminary investigation despite a request as part of the hearing of the parties

voiced.

B. Subject of Complaint

Based on the process outlined above, it follows that

The subject of the complaint is whether the Respondent through the entire

Rejection of the request for deletion of the payment experience data (creditworthiness data).

Complainant violated her right to erasure.

C. Findings of Facts

The Respondent operates an identity and creditworthiness database. The data

obtains it from publicly available sources or receives data from

Address publishers and payment experience information from a variety of sources

Corporate customers and over 60 debt collection partners.

By letter dated June 5, 2018, the complainant requested the deletion of her

personal data on the grounds that the listed data is no longer

are up to date, as they have paid off 100% of the debt as part of a payment plan

have. She requested the deletion of all credit-related data, with the exception of her

Name, date of birth and your current residential address.

By letter dated June 21, 2018, the request for deletion by the

Respondent dismissed.

The claim for EUR 4,007.97 from B*** Mobilfunk GmbH was removed from the database

deleted by the respondent. As of August 22, 2018, the following are still available

Information on the complainant in the respondent's database

saved:

[Editor's note: The original reproduced as a scan at this point

Printout of data from data processing by the Respondent can

not be reproduced pseudonymised with reasonable effort. It contains data

referred to as "Payment Experience Data", two noted as "positively done".

Claims against the complainant for EUR 481.34 or EUR 497.07 and in

the section "Judicial publications" contains detailed data on the carried out

Debt settlement proceedings to the extent published by the court

procedural edicts. Also included are three sets of name and address data as well as

the applicant's date of birth.]

A debt settlement procedure concerning the complainant as a debtor

became known on January 28, 2013 for GZ *6 S *4/13x at the H***stadt district court

did. On April 24, 2013, the payment plan was legally confirmed and that

Debt settlement procedure lifted. The end of the payment period was

April 15, 2018 determined.

The following entry can be seen in the edict file (last viewed on December 6th, 2018):

[Editor's note: The original reproduced as a scan at this point

Data from the edict file of the judiciary cannot be printed out with reasonable effort

be reproduced pseudonymised.]

Evidence assessment: The findings are based on consistent submissions

the complainant and the respondent in their letters to the

data protection authority and the attached documents. The statements regarding the

data stored about the complainant in the database of the respondent

arise from the response to the complainant's request for information

Letter dated August 22, 2018. This information also shows that the

Claim for EUR 4,007.97 from B*** Mobilfunk GmbH in the database query

Respondent is deleted. The complainant has the correctness of the

Information is not disputed and otherwise not within the scope of what was granted to it

voiced in accordance with the parties. The statements on the sources from which the

Respondent is provided with their data come from the

"General information and processing purposes", the Respondent.

D. In legal terms it follows that:

1. In the present case, the complainant requested, in accordance with Article 17(1).

DSGVO the immediate deletion of your personal data, except

their name, date of birth and current residential address

2. The complainant's arguments show that because of the

settled claim on the one hand according to Art. 17 (1) lit

purposes for which your personal data was collected, and on the other hand

thereby also unlawful processing of your data by the

Respondent claims pursuant to Article 17(1)(d) GDPR.

3. Initially, it should be noted that the processing of data relevant to creditworthiness by a

Credit information agency within the meaning of Section 152 of the Trade Code is covered by this provision

and the lawfulness of the processing of these data consequently differs from the previous one

Consent of a data subject depends. It can also be assumed that through the

legal anchoring of this activity of the legislature from the fundamental

Permissibility of this commercial activity, so that it is necessary to process it

Data can give legal authority. Because the exercise of this commercial

Activity without collection, storage and disclosure of corresponding data

cannot reasonably be imagined, it must also be assumed that the legislature in

certain categories of cases, a legitimate one that overrides the interests of those affected

Interest of these traders in using data about

"Credit conditions" considered given (cf. the recommendation of

Data Protection Commission of May 7, 2007, GZ K211.773/0009-DSK/2007; see also Supreme Court

from January 21, 2015, GZ 17 Os 43/14y).

4. In the absence of special rules for credit reporting agencies, the general principles of

GDPR to apply, according to which, among other things, personal data can only be used for specified,

clear and legitimate purposes may be collected (Article 5 (1) (b) GDPR).

Accordingly, in the present proceedings, it must first be stated that the purposes of

Data processing in the Respondent's database consist of those

To allow companies access to the data within the scope of their

economic activity involves a credit risk such as the delivery of their goods or

services (e.g. delivery on open account). Under certain

The prerequisite for this is the lawfulness of the processing in accordance with Article 6 Paragraph 1 Letter f

GDPR to be affirmed.

5. The subject of the proceedings, however, is the question of how long

Payment experience data after settlement of the claim still with the

Respondent can be stored before they can be used for the purposes of

processing (creditor protection) are no longer necessary; only if the

personal data are still relevant to creditworthiness, there is a processing purpose

in accordance with Article 5 (1) (b) GDPR.

A legally standardized period, how long entries in databases of

Credit bureaus 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

of risk minimization" on the legal situation before the GDPR came into force with regard to

Deletion of all entries in connection with a specific

Loan obligation, among other things, is subject to the condition that such a loan must be paid out seven years after repayment

of guilt or the occurrence of another debt-discharging event.

Finally, according to § 256 para. 1 Insolvency Code (IO), that 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 its

fulfillment is not 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 has been legally confirmed or

payment plan 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 because of lack of assets according to Section 68

Insolvency proceedings no longer to 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

respective special provisions provide an indication of the storage period of the data

deliver.

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

creditworthiness data only seven years after the debt is repaid with regard to

Article 6 paragraph 1 lit. f GDPR, but especially with regard to the since the time of the

enactment of the decision of the data protection commission cited above

In any case, the legal situation (cf. the cited provisions of the IO) is not proportionate

being.

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)

for the purpose of creditor protection and risk minimization".

to leave for the retention period.

6. For the present procedure this means the following:

The complainant has two "payment experience data" in the database of

Respondent saved. These are high claims

of 481.34 euros and 497.07 euros, which as "positively done" in the database

appear. Claims were opened in June and July 2010. The claim about

481.31 euros was closed on April 15, 2018; the second claim on February 27th

2013. In addition, the judicial

the complainant's debt settlement proceedings, which the information from

of the edict file. However, the entries are not identical because the insolvency file

does not contain a listing of the individual claims (“Payment Experience Data”). the

Negative entries about the exact amount of the claims do not come from either

the federal bankruptcy file.

Regarding point 1:

The claim in the amount of EUR 497.07 was opened on June 7, 2010 and with

February 27, 2013 positively settled. It is clear from the procedural record that the

Complainant about three entries from "payment experience data" in the

database of the Respondent, however, due to the low

The amount of the claim and the settlement of the debt more than five years ago are not included

it can be assumed that the processing of this data is still relevant to creditworthiness and

are therefore still of interest to the legitimate interests of the creditors. In this

case it must be assumed that the processing is no longer required for compliance

the legitimate interests of the creditors is necessary or that the interests or

The complainant's fundamental rights and freedoms prevail.

Regarding point 2:

The claim in the amount of 481.34 euros also dates from 2010,

but was only on April 15, 2018, thus with the repeal of

Debt settlement procedure closed, i.e. positively settled. is to be taken into account

therefore in relation to this entry and the judicial publication in the

Insolvency file that according to § 256 Para. 2 Z 4 IO already cited above, access to

the insolvency file is still possible until April 15, 2019, provided that the respondent

not requested the early deletion from this.

But also if the complainant requests deletion from the insolvency file

or the data was deleted from the public register on April 15, 2019,

does this not automatically mean that this data is in any case also from the database of

Respondent are to be deleted. This is already evident from the fact that the

public notice in the insolvency file different legal consequences, such as

such as the legal validity of the opening of insolvency proceedings, the charge of

Creditors and the registration of claims are linked and are not primarily related

oriented towards creditor protection for claims that have already been repaid. The publicity of

Although the insolvency file also serves to protect creditors, it cannot be disputed

that even after the publication of the debt settlement proceedings in

the bankruptcy file information about this in terms of creditor protection yet

can be relevant to creditworthiness. In this case, too, it is up to the credit agency

to assess whether this data still provides a statement on the creditworthiness of the

Affected people meet and they can thus continue to be processed.

It follows for the present procedure that the negative entry in the amount of

481.34 euros as well as the information from the edict file on the decision-relevant

point in time can still be left in the Respondent's database. It

there is no discernible reason why the claim for EUR 481.34 should be deleted if

this was not settled until April of this year, even if this claim is by no means

is "considerable", as the Respondent claims.

Regarding point 3:

Since the Respondent requested the deletion of the already paid in February 2013

Receivable in the amount of EUR 497.07 (origin: D*** Inkasso GmbH & Co KG)

refused was the respondent pursuant to Article 58 (2) (c) GDPR

order to comply with the complainant's request.

It was therefore to be decided accordingly.