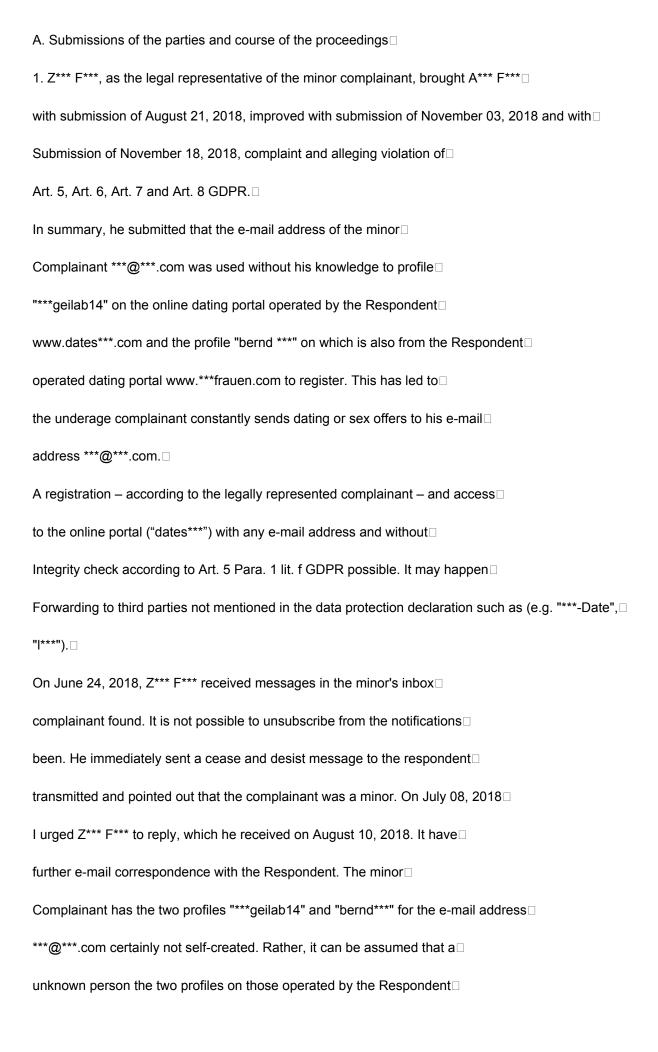
GZ: DSB-D130.073/0008-DSB/2019 from 9.10.2019 [Note editor: Names and companies, legal forms and product names,  $\square$ Addresses (incl. URLs, IP and email addresses), file numbers (and the like), etc., as well as □ their initials and abbreviations may be abbreviated for reasons of pseudonymization□ and/or changed. Obvious spelling, grammar and punctuation errors□ have been corrected.] NOTICE SPRUCH The data protection authority decides on the privacy complaint of the minor A\*\*\* F\*\*\* (complainant), represented by the guardian Z\*\*\* F\*\*\*, dated □ August 21, 2018 against N\*\*\*Netzwerk GmbH & Co KG (respondent). □ Violation of the right to secrecy as follows: □ - The appeal is upheld and it is established that the Respondent the complainant thereby in the right to secrecy according to § 1 para. 1 DSG has violated by lack of appropriate technical and organizational □ Measures in accordance with Art. 32 GDPR ("Security of processing") has enabled that with □ the email address \*\*\*@\*\*\*.com of the minor complainant, but without his□ Knowledge, the profile "\*\*\*geilab14" on the operated by the Respondent□ Online dating portal www.dates\*\*\*.com and the profile "bernd\*\*\*" on the also from the □ Respondent-operated dating portal www.\*\*\*frauen.com was created and the □ Complainants as a result of ongoing "contact suggestions" and notifications of □ Respondent to his e-mail address \*\*\*@\*\*\*.com. Legal basis: Article 32 of Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR), OJ No. L 119 of 4.5.2016; § 1 para. 1 and 2 as well as § 24 para. 1 and 5 of the □ Data Protection Act - DSG, Federal Law Gazette I No. 165/1999 as amended. □

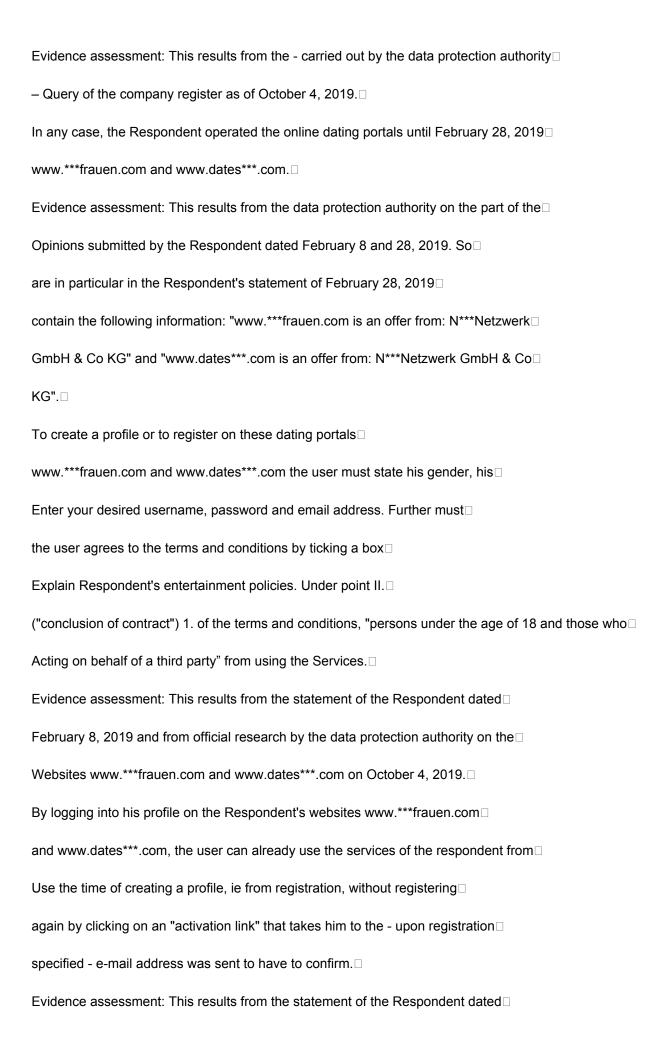
**REASON** 



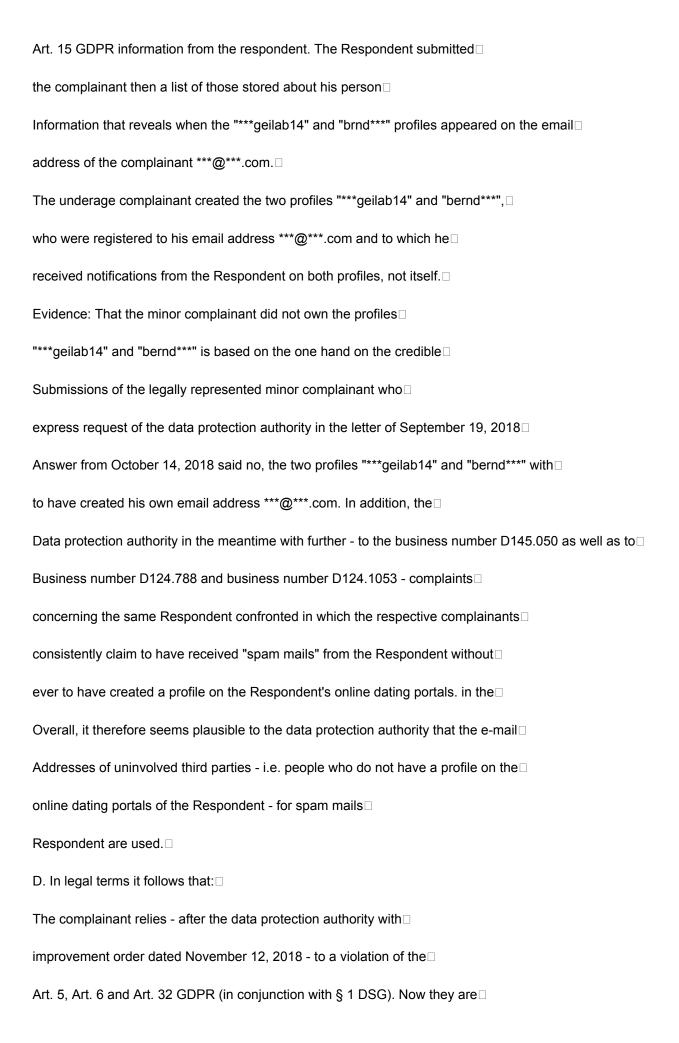
created online dating portals. □
The complaint is directed against the fact that creating a profile on the - from the □
Respondent operated - online dating portals without double opt-in procedure and □
possible without verifying the age of the "interested party" requesting via e-mail address□
may be. Z*** F*** can prove on the basis of a "self-test" that has been carried out that for the □
Creation of a profile and subsequent use of the Respondent's services □
the mere registration with an e-mail address without carrying out a double opt-in □
procedure is sufficient.□
For the two profiles "***geilab14" and "bernd***" - so the legally represented □
Complainant further - there is no confirmation of the implementation of the double opt-in□
Procedure and an age check, which the sending of sex offers to the as well □
legitimize the disclosure of the complainant's e-mail address ***@***.com.□
2. In its statement of February 8, 2019, the Respondent brought□
Essentially, that requires a user to create a profile on the one they operate □
Online dating portals www.dates***.com and www.***frauen.com his gender, the□
Enter the desired user name, password and an e-mail address as well as the □
accept the Respondent's Terms and Conditions and Entertainment Policy. □
After registration, the user will receive an email to the specified address□
Message asking them to activate their profile or provide their email address□
confirm. The user can also log in without activating his profile or confirmation□
log into his profile with his email address, but he would be prompted again□
be asked to confirm their email address. He also had to state his age. □
The profile can only be activated after clicking on the activation link sent to the e-mail $\hfill\Box$
address of the user will be activated. The user cannot change his profile□
activate if he does not have access to the e-mail address used. Only after□
After activation, the user will receive another e-mail. □

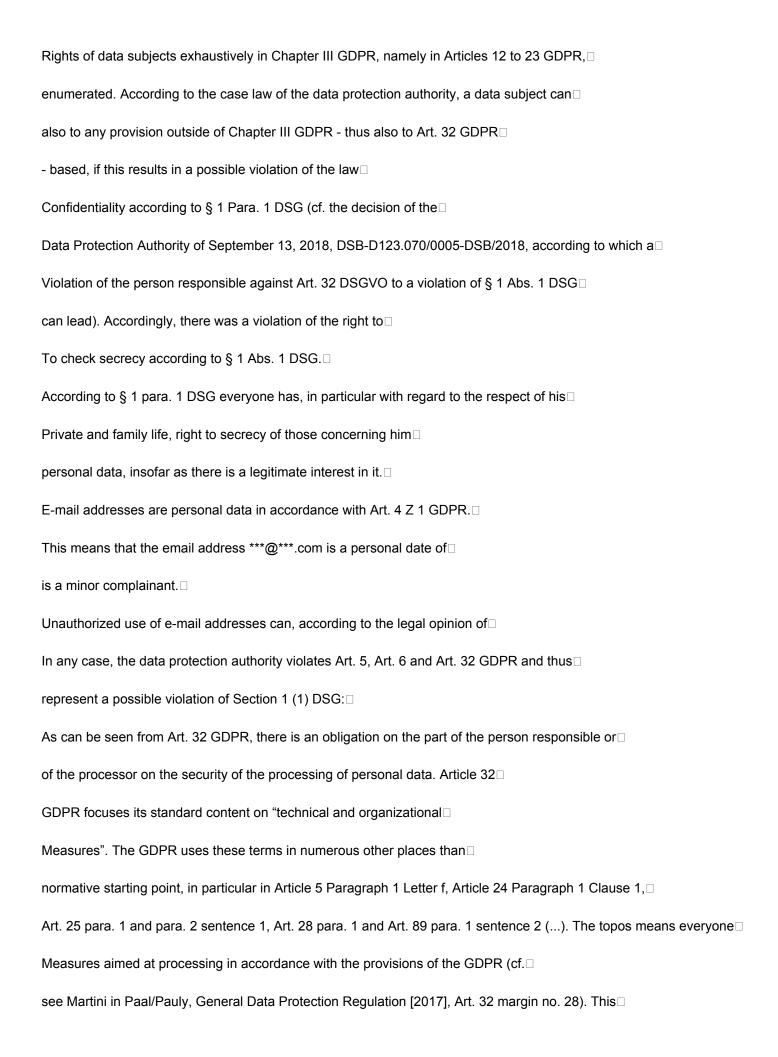
3. By letter from the data protection authority dated February 15, 2019 to GZ: DSB-D130.073/0001-□
DSB/2019 the respondent became the supplementary as follows□
Opinion requested:□
"The DSB understands your statement to the effect that a user (after creation □
his profile) can then already log into his profile on your website without the□
Activation link - in the message sent to his email address - to activate□
have to. Is that right?□
Which services can the user use if he has logged into his profile, although he□
not activated yet? Please demonstrate this with screenshots."□
4. In a statement dated February 28, 2019, the Respondent submitted the following:□
"We are happy to answer your questions as follows. □
It is correct that the user logs in after registration and explicit confirmation □
his age and place of residence and the request to send his DoubleOptIn email□
confirm that the portal can be used to a limited extent. □
The request to confirm his DoubleOptIn email comes regularly□
Rhythm (every 3-5 minutes) within the portal as long as the user does not confirm this –
has. □
It is possible for the user to make limited use of some services on the portal. $\hfill\Box$
We have attached the following screenshots as an example." $\hfill\Box$
[Editor's note: the graphic inserted at this point in the original□
Files/screenshots were removed because they were not pseudonymised with reasonable effort□
can become.]
4. The complainant brought in the context of the hearing of the parties with a statement of □
March 22, 2019 summarized that based on the documents submitted by him□
it has been proven that even without activating the profile, messages are actually only sent to the □
email address to be confirmed would be sent. That in the opinion of□

The double opt-in procedure mentioned by the Respondent does not apply, certainly□
also to encourage potential users to activate the profile. He can□
- so the legally represented complainant further - via a test account if necessary □
prove. He could not make a reasonable effort to realize that the real age □
the user will be determined. □
Despite the lack of profile activation via the double opt-in procedure, the minor□
Unsolicited inappropriate contact requests have been sent to the complainant. □
In summary, the legally represented complainant - even after knowing the□
Respondent's comments on the registration procedure for their
Online dating portals - from a violation of the GDPR by unlawful□
Processing/use of the e-mail address ***@***.com.□
B. Subject of Complaint□
Based on the submissions of the legally represented complainant, it follows that $\!\!\!\!\!\!\square$
The subject of the complaint is whether the respondent is the complainant□
thereby violated the right to secrecy by failing to provide suitable information□
technical and organizational measures in accordance with Art. 32 GDPR ("Security of the $\!\square$
Processing") has enabled that with the email address ***@***.com des□
Complainant, but without his knowledge, the profile "***geilab14" on the□
Respondent operated online dating portal www.dates***.com and the profile □
"bernd***" on the dating portal also operated by the Respondent□
www.***frauen.com and the complainant as a result□
"Contact suggestions" and notifications of the Respondent to his e-mail□
address ***@***.com.□
C. Findings of Facts□
The Respondent is registered under the name "N***Netzwerk GmbH & Co KG" in□
Registered under the company register number ******a.□



February 28, 2019. □
The e-mail address specified when creating a profile (= when registering) will be □
Creation of the profile continuously fed with notifications from the respondent. □
Evidence: This results from the credible submissions of the □
Complainant together with the - submitted at the same time as the complaint - to the e-mail $\hfill\Box$
Respondent's notifications sent to address ***@***.com.□
The complainant's email address is ***@***.com.□
Evidence assessment: This results from the - undisputed - arguments of the□
complainant in his complaint of August 21, 2018. □
In June 2018, Z*** F***, the father of - at the time the complaint was lodged on □
August 21, 2018 - 12-year-old complainant, in his email inbox ***@***.com□
son (= the complainant) several messages from the respondent. This□
Messages came from the online dating portals www.***frauen.com and □
www.dates***.com of the Respondent. The news, on the other hand, concerned that on that□
Online dating portal www.dates***.com set up profile "***geilab14" and on the□
Online dating portal www.***frauen.com set up profile "bernd***" and included under□
other "contact suggestions". Both profiles were on the email address ***@***.com des□
minor complainant registered.□
Evidence: This results from the credible submissions of the □
Complainant in his complaint of August 21, 2018, submitted by the□
Respondent was also not contested. □
On June 5, 2018, the profile "***geilab14" was published on the online dating portal www.dates***.com
created with the complainant's email address ***@***.com. On June 29, 2018□
the profile "bernd***" on the online dating portal www.***frauen.com with the email address□
of the complainant ***@***.com.□
Evidence assessment: By email dated July 8, 2018, the complainant requested





Security can be taken into account the elements specified in paragraph 1 of this provision□
can be guaranteed in several ways. For example, such a□
Data protection security measure in the implementation of a double opt-in procedure □
to obtain a legally compliant consent:□
The "double opt-in procedure" generally involves obtaining the □
Declaration of consent of the participant understood in a two-tier system, the one □
Registration to obtain electronic information, for example on the provider's website □
provides, in a first step, the individual message to the specified email address $\hfill\Box$
or the specified telephone connection, after which for this address or this□
Subsequent registration has taken place. Only after an on this (individual) mail or the □
answer given in a short message confirming the registration or similar□
Response (e.g. clicking on a link) will be sent advertising messages (cf□
the decision of the Administrative Court of June 26, 2013, ZI. 2012/03/0089 with further references).
As the Respondent itself submits, it is already a user after the□
Registration by logging into his profiles on the websites www.***frauen.com and □
www.dates***.com possible to use the Respondent's online dating portals. for□
the use of the Respondent's online dating portals, the user must□
Address that he gave when registering, not again by clicking on one□
"Activation links" sent to the e-mail address given during registration□
was sent, confirm.□
The Respondent also does not wait to send "contact suggestions" □
until the user completes his registration via an activation link, which he clicks on - upon registration
specified – e-mail address has been confirmed again. Much more□
sends the Respondent - even without clicking on the activation link - to the □
E-mail address provided during registration continuously with their notifications.
As a result, this means that the Respondent did not use a double opt-in procedure □

used.□
It is therefore possible - as in the present case - that a user does not register with his own□
e-mail address, but with the e-mail address of an uninvolved third party on the□
online dating portals of the Respondent can register. As a result, this user□
Use the Respondent's services without ever entering the e-mail account of the □
having to enter the e-mail address provided during registration. The uninvolved third party□
However, whose e-mail address is used for registration on the online dating portals□
received notifications ("contact suggestions") from the respondent□
sent his e-mail address without ever being on the online dating portals of the□
to have registered the complainant. □
That is exactly what happened in the present case: the e-mail address of the minor□
Complainant ***@***.com was used by unknown person(s) to create□
used by two profiles on the Respondent's online dating portals.□
Due to the fact that the Respondent did not have sufficient, Art. 32 DSGVO□
has taken appropriate data security measures, it was possible that□
personal data of the complainant - namely the e-mail address ***@***.com -□
have been unlawfully processed, depriving the complainant of his fundamental right□
Confidentiality according to § 1 Abs. 1 DSG violated. □
To claim for damages □
Regarding the claim for damages raised by the complainant□
data protection authority incompetent. According to § 29 Para. 2 DSG, the local authority is responsible for this
appeal to the provincial court.□