GZ: 2020-0.436.002 from September 8, 2020 (case number: DSB-D124.909)

[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 Dr. Markus A***

(complainant)

from the

June 7th

2019

against

the

N***AddressverlagsgmbH

(Respondent), represented by attorney Mag. Uwe K***, for violation of the right to

information as follows:

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

Respondent thereby infringed the complainant's right to information,

by on June 4, 2019 and September 9, 2019 (in the ongoing proceedings before the

data protection authority) has provided incomplete information.

2. The Respondent is instructed to notify the Appellant within a time limit

of four weeks, otherwise an execution pursuant to Article 12 Paragraph 1 in conjunction with Article 15 Paragraph 1 lit

DSGVO corresponding information on the creation of the calculated Geo_Milieus

To give.

3. The complaint is otherwise dismissed.

Legal bases: Art. 4 Z 1, Art. 4 Z 4, Art. 12 Para. 1 and Para. 6, Art. 15 Para. 1, as well as

Art. 77 Para. 1 of the Regulation (EU) 2016/679 (General Data Protection Regulation-GDPR), OJ.

No. L 119 of 4.5.2016, p. 1; in conjunction with Sections 1 (3) DSG, 4 (6), 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 the submission of June 7, 2019, the complainant identified a violation of the law

Information applies because the Respondent responded to his request for information of May 28, 2019

regarding the calculation of the so-called "dominant geo milieus" in a letter dated June 4th

I replied in 2019 that these were "probability calculations", whose

Calculation methodology as a trade and business secret according to § 4 Para. 6 DSG, however

would not be informed.

The complainant received one from V***adressenlieferant GmbH in January 2019

Receive data information regarding the "dominant Geo_Milieus" and be regarding this -

data purchased from V***adressenlieferant GmbH on the data supplier

"N***Adressverlagsgmbh". The complainant requested that

Data Protection Authority may

state that the Respondent has information on

I have to give calculation methodology, since these are personal and concrete statements about

person of the complainant, which would be made available to the public.

2. With a statement dated September 9, 2019, the Respondent brought

Essentially, the Geo_Milieus are a segmentation of

Societies based on value orientations and lifestyles in 18 nations for

strategic marketing on the basis of social science research, depicting the

social structures act,

in which similar basic orientations, values,

Lifestyles and living environments would be summarized and made comparable. The

The calculation model is based on "forming hypotheses" based on our own research

and existing data (...) and will use these with the involvement of milieu experts

accomplished. Neither would personal and specific statements to the complainant

made nor would these be available to the public. The probabilities of

Geo_Milieus were calculated by the company Z***Marketing GmbH in E*** (Y***). In the

Statement included was an information table with a total of ten Geo_Milieus and the

calculated probabilities for the complainant. was also connected

an explanation of the meaning of the ten Geo_Milieus. The information of

Calculation methodology represents a trade and business secret, whereby the

Disclosure of parameters in the context of information involves significant legal disadvantages

because these "parameters" can be imitated or imitated by others.

3. As part of the granted hearing (letter from the data protection authority of

21 October 2019), the complainant submitted a number of new requests (e.g. infringement

in the right to secrecy, deletion of data and prohibition of processing) both

against the Respondent as well as against V***adressenlieferant GmbH, without

address the original subject of the complaint. The requests were made under

separate procedure numbers (D124.2633 and D205.366).

B. Subject of Complaint

Based on the arguments of the parties, the object of the complaint is this

Procedure the question of whether the Respondent the complainant by a

violated his right to information by providing incomplete information.

C. Findings of Facts

The complainant's request for information of May 28, 2019 was confirmed by letter dated

4 June 2019 - as follows - answered:

In the above matter, I refer to your letter of

05/28/2019, arrived on 05/31/2019 and may send you the

Communicate parameters to GeoMilieus:

Geo Milieus is a segmentation of

Societies based on value orientations and lifestyles in

18 nations for strategic marketing on basis

social science research under mapping of the social

Structures and their changes in which similar

Basic orientations, values, lifestyles, living environments

summarized and by a uniform positioning scheme

be made comparable. The segmentation is sufficiently fine

but not exaggerated and helps with marketing planning, which in the

groups (milieus) mentioned and a resource calculation

enable. This calculation model is based on a

Formation of hypotheses based on own research and existing ones

Data involving milieu experts and subsequent

Review and correction of the hypothesis and differentiation for

Determination of a strategic map in which products, brands and

Media can be positioned.

The listed probability values classify in detail

(according to Z***Marketing):

Dominant_geo_milieu_person:

-probability_value_conservative

Leading milieu in the traditional area with a high

Ethics of responsibility: strongly influenced by Christian values,

High appreciation of education and culture, critical of current ones

social developments□

-probability_value_traditional□

The milieu focused on security, order and stability:□

Rooted in the old petit-bourgeois world, in the traditional□

working-class culture and in the traditional rural milieu□

-probability value_established□

The performance-oriented elite with a strong sense of tradition:□

Clear claims to exclusivity and leadership, high□

Awareness of status and a strong ethos of responsibility□

-probability_value_performer□

The flexible and globally oriented modern elite: efficiency,□

Personal responsibility and individual success have top priority; Height□

Business and IT competence□

-probability_value_postmaterial□

Cosmopolitan social critics: educated, diverse□

milieu interested in culture; cosmopolitan but critical□

towards globalization; socially engaged□

-Probability value_digital individualists□

The individualistic and networked lifestyle avant-garde: Mental□

and geographically mobile, networked online and offline, constantly on the lookout□

after new experiences□

-Probability value_bourgeois_middle□

The high-performing and adaptable mainstream: striving for□

professional and social establishment, secured and harmonious□

conditions, support and orientation, rest and deceleration□

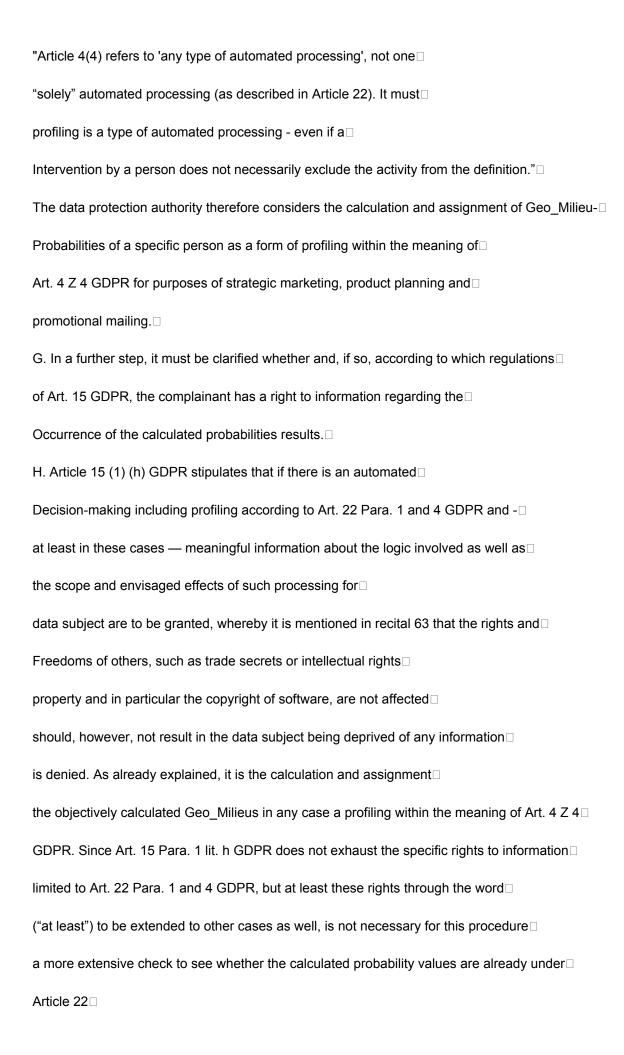-probability_value_adaptive_pragmatic□

The new flexible center: pronounced pragmatism in life,☐

striving for anchoring, belonging, security; fundamentals☐

Willingness to perform, but also a desire for fun and entertainment☐

-Probability_value_consumption_oriented_base☐

The participation-oriented, consumer-oriented lower class:☐

Strong feelings of disadvantage, fear of the future and☐

resentment; trying to keep up with the lifestyle and the☐

middle consumption standards☐

-probability_value_hedonists☐

The moment-related, experience-hungry lower middle: life in☐

Here and now, looking for fun and entertainment; denial of☐

conventions of mainstream society☐

The percentages you mentioned concerning yourself☐

Values are always based on scientifically recognized ones☐

Probability calculations based on existing ones☐

social science research and population data in☐

several countries, showing the social structures and☐

of their changes, in which similar basic orientations, values,☐

Lifestyles, living environments summarized and through a unified☐

Positioning scheme can be made comparable and will be these☐

Calculations based on own research and existing data☐

with the involvement of milieu experts by Z***Marketing GmbH☐

accomplished. Referring to existing operating and☐

However, we can give you the underlying business secrets☐

Unfortunately, we cannot and are not allowed to disclose the calculation methodology☐

refer to Section 4 (6) of the Data Protection Act in this regard. We ask for☐

Your understanding.

We hope that this information has answered your open questions

be able.

In the ongoing proceedings before the data protection authority was given the opinion

of the Respondent additionally the following (excerpt) information about the concrete

calculated Geo_Milieus granted:

The following classification based on a probability calculation according to the

Geo_Milieus of Z***Marketing (which includes the Sinus-Milieus known from market research

for dialogue marketing to the geographic area) assist the complainant

calculated, assigned and stored by the Respondent:

Dominant_geo_milieu_person

post material

probability_value_conservative

probability_value_traditional

probability value_established

probability_value_performer

Probability_value_postmaterial

Probability_value_digital_individualists

Probability value_bourgeois_middle

Probability_value_adaptive_pragmatic

Probability_value_consumption_oriented_base

probability_value_hedonists

2.03%

0.38%

14.44%

34.27%

25.22%☐

8.19%☐

3.20%☐

1.59%☐

1.42%☐

9.28%☐

Evidence assessment: The findings made are based on the data contained in the file,☐

letters and statements known to both parties and which have remained undisputed.☐

D. In legal terms it follows that:☐

1. To provide data/information for the calculation of the geo-milieus (point☐

2a.)☐

a. According to Art. 4 Z 1 GDPR, "personal data" is all information relating to☐

relate to an identified or identifiable natural person; one becomes identifiable☐

natural person who directly or indirectly, in particular by means of assignment to☐

an identifier such as a name, […] to one or more special features☐

can be identified that express the physical, physiological, genetic,☐

psychological, economic, cultural or social identity of this natural person☐

are;☐

b. In the partial decision of August 20, 2020, GZ W258 2217446-1/15E, the BVwG☐

pronounced that it is statistically calculated data belonging to a specific person☐

are assigned to personal data.☐

In the present case, too, these prerequisites are undoubtedly present, since the "geo-☐

Milieu data" refers to an identified natural person, namely the complainant☐

take, like☐

she☐

also☐

statistical

or.

under

assistance

from

probability calculations have been calculated (cf. also Kühling/Bucher,

Commentary on the GDPR, margin no. 15 on Art. 4 No. 1, Klabunde in Ehmann/Selmayr, data protection

Basic Regulation, Art. 4, margin no. 10 or cf. Ziebarth in Sydow, European Data Protection

Basic Ordinance, hand commentary, Art. 4 para. 41). Without the assignment would also be a

personalized or targeted advertising activity is not possible at all. It should be noted that

the data protection commission at the time already made assessments with the help of statistical

Extrapolations regarding a person's probable affiliation with a

specific target group or age group, qualified as personal data (cf. Jahnel,

Handbook on data protection law, margin no. 3/72; see also the decision of the DSK of May 20, 2005,

GZ K120.908/0009-DSK/2005). Against this background, it is objective

the percentage probabilities of the complainant's Geo_Milieu data

in any case, personal data subject to disclosure within the meaning of Art. 4 Z 1 GDPR.

In a further step, it must be clarified to what extent the processing is profiling

acts.

c. As the Respondent itself explains, the so-called Geo_Milieus

similar basic orientations, values, lifestyles and living environments summarized and

made comparable, whereby the calculation model is based on "hypothesis formation".

Based on own research and existing data (...) including

Milieu experts based, including subsequent review and correction of the hypotheses

by the company Z***Marketing GmbH in E*** to carry out marketing planning.

i.e. Art 4 Z 4 GDPR defines "profiling" as any type of automated processing

personal data, which consists in that this personal data

used to identify certain personal aspects relating to an individual

relate, evaluate, in particular to aspects relating to work performance, economic

location, health, personal preferences,

interests, reliability, behavior,

analyze the whereabouts or relocation of that natural person; or

to predict;

e. In the segmentation, calculation and assignment of Geo_Milieus in a

automated processing of personal data processed in order to

to evaluate personal aspects relating to a natural person, in this case

in particular, aspects relating to the economic situation, personal preferences, interests

etc. to analyze, segment and probabilities of assignment

Calculate Geo_Milieus for targeted strategic marketing, product planning and

to send advertisements.

f. The subsummation under the concept of profiling requires - the wording of Art 4 Z 4

According to GDPR – not that analyzes or predictions about a natural person

are exclusively automated, as is the case, for example, with Art. 22 GDPR

for

"Automated decisions in individual cases" standardized. Rather, from the last sentence

Recital 71 clearly evident that the Union legislature uses the terms "profiling" and

wanted to consider "automated decision-making" separately if standardized ("(...)

Automated decision making and profiling based on special categories

of personal data should only be allowed under certain conditions").

Accordingly, the guidelines on automated decisions in individual cases

including profiling for the purposes of Regulation 2016/679" (WP 251 rev.01) of

Read February 6, 2018 under point A. ("Profiling"):

"Article 4(4) refers to 'any type of automated processing', not one

"solely" automated processing (as described in Article 22). It must

profiling is a type of automated processing - even if a

Intervention by a person does not necessarily exclude the activity from the definition."

The data protection authority therefore considers the calculation and assignment of Geo_Milieu-

Probabilities of a specific person as a form of profiling within the meaning of

Art. 4 Z 4 GDPR for purposes of strategic marketing, product planning and

promotional mailing.

G. In a further step, it must be clarified whether and, if so, according to which regulations

of Art. 15 GDPR, the complainant has a right to information regarding the

Occurrence of the calculated probabilities results.

H. Article 15 (1) (h) GDPR stipulates that if there is an automated

Decision-making including profiling according to Art. 22 Para. 1 and 4 GDPR and -

at least in these cases — meaningful information about the logic involved as well as

the scope and envisaged effects of such processing for

data subject are to be granted, whereby it is mentioned in recital 63 that the rights and

Freedoms of others, such as trade secrets or intellectual rights

property and in particular the copyright of software, are not affected

should, however, not result in the data subject being deprived of any information

is denied. As already explained, it is the calculation and assignment

the objectively calculated Geo_Milieus in any case a profiling within the meaning of Art. 4 Z 4

GDPR. Since Art. 15 Para. 1 lit. h GDPR does not exhaust the specific rights to information

limited to Art. 22 Para. 1 and 4 GDPR, but at least these rights through the word

("at least") to be extended to other cases as well, is not necessary for this procedure

a more extensive check to see whether the calculated probability values are already under

Article 22

Section 4

GDPR

to

subsume

are

(see.

about

the

probability_value_conservative,

(...)

"strong on Christian values

embossed").

i. Consequently, the already mentioned guidelines on Art. 22 GDPR also state that

the explanations relate to "all" profiling activities and automated decisions

relate.

The guidelines state the following on page 18 with regard to the provision of information:

"According to Article 15, the data subject has the right to obtain details of the data for the purpose of profiling

Request personal data used, including for profiling

used data categories. In addition to providing general information about

According to Article 15 paragraph 3, the person responsible is obliged to process the

provide input data used for profiling; besides, he has to

Information about the profile and details about the segments into which the data subject is divided

was, communicate. (...)"

The right to information about the content of Geo_Milieu data is therefore based on Art. 15 Para. 1

lit. h GDPR, whereby specifically for information in accordance with Art. 15 Para. 1 lit. h GDPR the

Parameters / input variables of a calculated assignment, their influence on the calculated one

Assignment, i.e. essentially the weighting of the parameters, the information on the

occurrence of the parameters

/ Input variables (e.g. whether the parameter

"living environment" was statistically extrapolated), an explanation as to why the person concerned

has been assigned to a specific evaluation result and a list of the

Profile categories that are possible for an assignment would have to be provided (according to Zavadil in

Dako 2020/33 for information on "automated decision-making", "Der

special right to information about the logic involved in data processing" mwN) or

to provide similar information that is equivalent to the information content

Enable data subjects to exercise their rights to rectification, erasure and

to carry out verification of legality.

2. On the objection that an operational and business secret of the Respondent

be touched:

a. Nor does the Respondent speak against such information

general trade and business secret for the calculated assignment. Then

The logic of the algorithm, its source, is by no means owed in the context of the information

code, the compilation code or the complete documentation, but only

information

for those affected

in a specific individual case, the traceability,

Comprehensibility and the correctness or timeliness of the input variables in the case of

to ensure those affected. The data protection authority does not ignore the fact that the

Calculation methodology of the Geo_Milieus with a probability bordering on certainty

is subject to the European legal provisions of Directive 2016/943/EU (Know-How Directive),

since the scientifically developed calculation methodology undoubtedly does not

insignificant commercial value, neither in its entirety nor in the

exact arrangement and composition of their components in the appropriate ☐

Public circles is generally known and appropriate confidentiality measures ☐

evidentially set (cf. Art. 2 Z. 1 ☐

leg. cit.). However, the ☐

Data Protection Authority through the decision to disclose parameters and their ☐

Weighting in individual cases, the risk of disclosing a (complete) algorithm and/or ☐

to be able to imitate or the exact arrangement and composition of the algorithm ☐

reveal as low, especially since the data protection authority it the respondent ☐

reveals, through similar information equivalent to the information content, which the ☐

Enable data subjects to exercise their rights to rectification, erasure and ☐

verifying the legality of fulfilling its obligations. ☐

b. Basically, it is stated that the refusal to provide information with reference to ☐

Business and trade secrets to those with constitutional status or ☐

8 ECHR or Art. 8 EU-GRC as well as § 1 Para. 3 ☐

DSG to information or correction of data of the person concerned less difficult ☐

will be weighted. Regarding the – brought up by the respondent – ☐

Provision of § 4 para. 6 DSG, according to which the right to information does not exist if the ☐

business and trade secrets of the person responsible are endangered, it must be noted that ☐

that this is an exception to the right of access and exceptions to ☐

the general provisions of the GDPR - following the case law of the ECJ ☐

are to be interpreted (cf. most recently the judgment of July 16, 2020, C-311/18, margin no. 84). Apart from this ☐

reference is made to the above statements, according to which the information is also given in this way ☐

can ensure that trade and business secrets are not affected. ☐

c. On the other hand, the request of the complainant was to be rejected by the respondent ☐

may (fully) disclose their calculation methodology. Neither does this appear for one ☐

Request for information necessary, nor does this result from the provision of Art. 15 ☐

Paragraph 1 lit. h GDPR, where only "meaningful information on the logic involved

and their effects" is discussed, but not the logic involved itself.

It was therefore to be decided overall in accordance with the verdict.