

[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 Bernhard A\*\*\*\*'s data protection complaint□

(complainant) of November 24, 2018 against N\*\*\* Gesellschaft m.b.H.□

(Respondent), represented by F\*\*\* Rechtsanwälte GmbH, for infringement□

in the right to erasure and in the right to object as follows:□

- The complaint is dismissed as unsubstantiated .□

Legal basis: Article 5 paragraph 1 letter a, Article 6 paragraph 1 letter a, Article 7 paragraph 3, Article 12 paragraph 4,□

Art. 16, Art. 21, Art. 24 (1), Art. 25 (1), Art. 57 (1) lit. f and Art. 77 (1) of the□

Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR), OJ No. L 119□

from May 4th, 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 November 24, 2018, the complainant claimed a□

Violation of the right to erasure and the right to object. **summarized**□

**He is a customer of the N\*\*\* regular customer club and, by letter dated August 20, 2018,**□

**partial deletion of detailed data of his purchases from the Respondent**□

**requested.** In a letter dated August 21, 2018, **the Respondent informed**□

**not to comply with the deletion request, since a partial deletion of individual**□

data fields from their systems is not possible. By letter dated August 21, 2018□

he has the processing of personal data for personalized□

Data evaluation (profiling), the processing of personal data "in the context of□

Advertising" and the processing of personal data for personalized□

"Revoke" data evaluation.□

2. By letter dated December 20, 2018 (ha. received December 21, 2018)□

the Respondent submitted in summary that they□

customer loyalty program, the N\*\*\* regular customer club. As performance would□

Discounts, credits and promotions are granted on purchases made before□

payment process the customer card is presented. This requires that a□

Register customer for the N\*\*\* regular customer club card. The complainant is□

been offered to delete his data, but the complainant also□

of further correspondence only the deletion of individual data fields in□

meeting held. However, the GDPR is not a right to partial deletion and not a right□

to a partial revocation of the processing. Furthermore, there is a deletion□

of individual data fields is not technically possible.□

3. By letter dated January 7, 2019, the complainant submitted, as indicated by the□

Data protection authority commissioned, which the respondent issued to this□

Information from July 4, 2018. On August 21, 2018 he approved all of them□

Processing activities, with the exception of "Point 3 - Processing of personal□

Data in the context of the customer account" and "Point 4 - Processing of personal□

Data in the context of online use of the customer account". Therefore, the□

Legal basis for the processing of the purchase behavior and the processing after□

"Point 5 - Processing of personal data in the context of advertising" and "Point□

6 – Processing of personal data for personalized data analysis". for□

the granting of benefits and discounts is not the detailed purchasing behavior□

necessary.□

4. By letter dated January 25, 2019, the data protection authority requested the □

Respondent to explain why the deletion of individual data fields □

is technically not possible. The Respondent brought this about by letter dated □

March 20, 2019 summarized that each of the individual customers □

processed information in uniformly defined data fields in a relational □

database are stored, which consist of many related tables □

would. In each case, object-related information, such as article information, □

Product groups, customer information and mailings stored in tables and individual □

Attributes of these tables (data fields and columns) are related and □

get connected. In turn, there are several applications on this database □

based, as well as the customer database, the accounting system and the □

merchandise management system. The latter enables more precise planning □

Branch allocations (which branch gets which item in which quantity and when) and □

for discounts that are limited to either branch, rayon, or state, or □

extend across the entire federal territory. Predict as accurately as possible □

Being able to know where which quantities to buy is to be expected is essential □

Prerequisite for a functioning modern supply chain. □

It was not technically possible for the Respondent to do this individually for each customer □

set which data would be collected as part of the payment process. □

Changing these processes would have serious technical and legal implications □

Effects, because these "cash register data" also for the so-called "electronic □

Journal" of the Respondent would be used and stored, □

which, according to the legal requirements of the BAO and the RKSv, is the second till roll □

replace The storage period of two years with regard to date, time and branch □

necessary and appropriate to prove abuse. Also be him □

Complainers about the two-year retention period in the privacy policy□

been informed and have nevertheless registered for the N\*\*\* regular customer club.□

In order to ensure that the IT system and the□

The Respondent technically has to guarantee the customer loyalty program□

implemented a "lock flag" in the system. If this is activated, the□

Customer data no longer used for personalized discounts. A customer of the N\*\*\*-□

However, regular customer clubs continue to receive non-personalised, general mailings□

with non-personalized discounts. Such general mailings would also□

revoked consent can no longer be sent. To the interests of□

To take account of the complainant, the respondent has the objection□

of the complainant regarding the profiling activity of the respondent for the□

Purpose of sending personalized discounts already by setting the technically im□

System implemented blocking indicator implemented. It will continue to be offered□

to delete all of the complainant's data in the N\*\*\* Regulars' Club.□

5. The complainant then replied - according to the parties to the results of the□

preliminary proceedings - summarized in his statement of April 1, 2019,□

that the "technical complexity" referred to by the Respondent□

cannot be a license not to care about data protection. Individual data fields□

may not be erasable, but you can overwrite them and therefore□

anonymize; only the referential integrity (primary and foreign keys) must□

be assured.□

B. Subject of Complaint□

Based on the submissions of the appellant, it follows that□

The subject of the complaint is whether the respondent is the complainant□

thereby violated the right to erasure and the right to object by□

his request of August 20, 2018 for deletion and his request for objection□

dated August 21, 2018.□

### C. Findings of Facts□

1. The Respondent operates a retail business with stores throughout□

Austria. In this capacity, it also runs a customer loyalty program, den□

N\*\*\* Regulars Club.□

2. Participation in the customer loyalty program requires that a□

Customer registered for the N\*\*\* regular customer club card and the data protection declaration□

agree. The Respondent's privacy policy is as of August 21□

2018 in excerpts as follows (formatting not reproduced 1:1):□

"[...]□

2. Scope of services with the N\*\*\* regular customer club card□

In the following we describe the scope of services of our N\*\*\*□

Regulars Club Card.□

2.1. Discounts, credits and promotions□

As a service in your customer account, we grant you discounts, credits and□

Promotions on your purchase. These can relate to individual items, specific□

Assortments or the entire purchase and can relate to all or just one□

be made available to certain groups of people. Required for this□

is that you show your customer card before the payment process, which is used by our□

employees is recorded digitally. Information on this can be found in our□

advertising or in the branch. The national or regional actions are temporal□

limited and may depend on the value of your purchase.□

2.2. advertising□

Advertising is any measure aimed at promoting the sale of (foreign) products. at□

With the appropriate consent, we transmit advertising for products, goods□

or services by e-mail, post or at the cash register. Should you choose to email□

have decided as a communication channel, you will receive after the ☐

Processing of your data from us again a separate confirmation e-mail. First ☐

after clicking on the link contained therein, you will receive advertising e-mails. ☐

[...] ☐

## 2.6. Personalized data analysis (profiling) ☐

Based on the personalized data analysis, we are able to understand your purchasing behavior ☐

to be processed automatically. By evaluating your customer data such as the ☐

We can offer our services in a more targeted and specific manner. ☐

[...] ☐

## 5. Processing of personal data in the context of advertising ☐

With your declaration of consent to the receipt of advertising, we would like to inform you about ☐

Notify current products, services, sweepstakes and promotions. ☐

Profiling: To provide you with targeted and specific information and advertising about ☐

current products, services, competitions, customer surveys and promotions ☐

that match your purchasing behavior, we analyze your purchasing data, your ☐

Participation in our promotions and you ☐

usage behavior of our electronic media. To do this, we evaluate the following data: ☐

Master data: name, place of residence, age, gender. ☐

Buying behavior: place of purchase (branch), product and product category, use of offers ☐

and promotions when purchasing the goods/products, length of participation/frequency and ☐

Similarity determination with other of our customers. ☐

If you have opted for a postal notification, we will process it ☐

Your surname, first name, address and date of birth. ☐

If you have opted for notification by e-mail, we will process it ☐

Your previously verified email address and date of birth, if provided. Her ☐

We process your date of birth in order to send you a birthday benefit ☐

can or because we inform you about the availability of such a birthday present□

want to inform.□

This data processing is based on Art 6 Para 1 lit a GDPR and Art 7 GDPR and serves□

receiving advertising.□

6. Processing of personal data for personalized data analysis□

Unless you have opted out of profiling, we will use your online□

User behavior through automated processing of your personal data□

Evaluate your buying behavior. We store your information in relation to your□

buying behavior. Through this data processing we want our services□

improve. To do this, we evaluate the following data:□

Master data: name, place of residence, age, gender.□

Buying behavior: place of purchase (branch), product and product category, use of offers□

and promotions when purchasing the goods/products, length of participation/frequency and□

Similarity determination with other of our customers.□

This data processing is based on Art 22 Para 2 lit c, 6 Para 1 lit a, 7 GDPR and serves□

of personalized data analysis.□

[...]□

8. Duration of storage□

Your data on purchasing behavior will be stored for two years, the resulting profiling□

Data is stored for five years and your annual sales for seven years. We delete□

all your personal data in principle after you have left the□

Customer program (end of contractual relationship), at the latest after all□

statutory retention requirements."□

2. The complainant has opted to participate in the N\*\*\* Regulars Club□

registered and the Respondent's data protection declaration mentioned above□

accepted.□

3. Subsequently, the complainant has the deletion on August 20, 2018□

certain data requested from the Respondent. That request is:□

excerpts as follows (formatting not reproduced 1:1):□

"[...]□

Dear N\*\*\* team.□

Thank you for providing the information about my processed data, in accordance with□

Article 15 GDPR.□

Printed on paper, the amount of data is tangible even for IT laypeople and is naturally stimulating□

to think of.□

I hereby ask you for the detailed data (branch, shopping time, article description, ...) of my□

Delete purchases from D\*\*\* (details below) and no longer for a longer period in the future□

Save period as the purchase and for billing purposes.□

You can collect further aggregated data such as purchase amount (per purchase), total□

per month and year, etc.□

However, I ask you not to record any details longer than for the implementation of the□

actual service = purchase necessary. I am aware and I accept□

knowledge that you are not giving me any detailed article-related vouchers (which□

are rarely suitable, by the way) and can offer promotions more for which□

general actions such as \*\*\*Point collectors, however, will also suffice aggregated data□

(e.g. purchase amount per month).□

Detailed listing of the data to be deleted according to categories:□

Purchasing information per purchase□

Please delete:□

· Column purchase date the time□

· Column Filale the branch (you are welcome to save the federal state, therefore e.g□

instead of 3023□



3XXX).□

Purchasing information in detail□

Please delete:□

- Purchase date column: the time□

- Branch column: the branch (Federal state is sufficient, therefore eg 3XXX instead of 3023).□

- Article description column: Article description□

mail items□

Please delete all information about mail items□

Product groups of the total turnover□

Please delete the data, or at least the text or part.□

I would also ask you not to enter this data per category in the future.□

Ideally, they will offer their customers in the future via their website itself□

to be able to configure which data is processed for a longer period of time.□

[...]"□

4. In addition, the complainant, in a further letter dated 21□

August 2018 requested the following from the respondent (formatting not 1:1□

reproduced):□

“[...] I assume this is a standard answer because technically□

there is no valid reason why one should not be selective about records in databases□

delete (anonymize) can.□

Anyway, I care about the detailed purchasing information about each one□

Purchase, in particular the exact time of purchase, branch and item description.□

As far as I understand, the survey according to□

[https://www.n\\*\\*\\*.at/Footer\\_Nav\\_seiten/\\*\\*\\*Datenschutz/dd\\_bi\\_\\*\\*\\*page.aspx](https://www.n***.at/Footer_Nav_seiten/***Datenschutz/dd_bi_***page.aspx) des□

detailed shopping behavior (exact time of purchase, branch and article) at:□

2.6. Personalized data analysis (profiling)□

5. Processing of personal data in the context of advertising, as well as ☐

6. Processing of personal data for personalized data analysis ☐

Therefore if I give my consent to: ☐

2.6. Personalized data analysis (profiling) ☐

5. Processing of personal data in the context of advertising, as well as ☐

6. Processing of personal data for personalized data analysis ☐

revoked, the following data will no longer be stored or the current one ☐

saved deleted ☐

(Date/time, article description and branch). ☐

If so, I hereby revoke the processing of my personal data ☐

to the ☐

2.6. Personalized data analysis (profiling) ☐

5. Processing of personal data in the context of advertising, as well as ☐

6. Processing of personal data for personalized data analysis ☐

Note on advertising. You are welcome to send me advertising, no problem, ☐

however I see ☐

no reason why they necessarily purchase location (branch), product and product category ☐

require. ☐

Even with a statistic about the shopping behavior in the district, they can do a lot ☐

send targeted advertising. ☐

[...]" ☐

4. By letter dated August 21, 2018, the Respondent dem ☐

Complainant informed, the partial request for cancellation and the ☐

not to comply with the partial request for objection. The reason given was ☐

that a partial deletion of individual data fields is not possible. the ☐

However, the Respondent offers to store all of the Complainant's data in the N\*\*\*- ☐

to delete the regular customer club.□

5. The Respondent has in connection with the bonus program□

implemented a "lock flag" in the existing system. Will this with regard to□

a specific data record of a customer is activated, the data of the customer are not□

more used for personalized discounts. This blocking indicator was□

Complainant set.□

Evidence assessment: The findings made are based on the input of the□

Complainant dated November 24, 2018 and the correspondence submitted□

between the complainant and the respondent before the complaint procedure□

the data protection authority, and the submitted copy of the privacy statement□

of the Respondent as of August 21, 2018.□

D. In legal terms it follows that:□

1. For the partial exercise of data subject rights according to Chapter III GDPR□

The constitutionally guaranteed right to□

Deletion of illegally processed data is now based on the provisions of Art. 17□

GDPR, the right to object to direct advertising that does not require justification□

according to the requirements postulated in Art. 21 Para. 2 GDPR.□

The right to object is related to the right to erasure insofar as□

a (successful) objection pursuant to Article 17 (1) (c) GDPR to the person responsible□

obliged to delete it immediately. Furthermore, the partial revocation of□

Consent within the meaning of Art. 4 Z 11 DSGVO, which the complainant apparently sent to the□

Respondent has directed, pursuant to Art. 17 (1) lit. b to a corresponding□

obligation to delete.□

The enforcement of the rights mentioned is in Art. 12 Para. 3 DSGVO in the way□

regulated that the deletion (possibly on the occasion of the objection) - on request - within□

of one month and the person concerned a corresponding one□

Notification is to be made, or the data subject within this period pursuant to Art. 12□

Paragraph 4 GDPR must be informed why no (complete) deletion□

takes place. The person responsible has to check the databases with regard to this□

to carry out the request for deletion or objection; this process is subject□

control by the data protection authority.□

In the present case, the Respondent argued that the GDPR□

no right to partial deletion and no right to partial objection□

be taken.□

The data protection authority has already dealt with the question of whether the rights of data subjects are partial, i.e.□

merely with regard to certain personal data, can be exercised with□

Notice of December 5, 2018 on GZ DSB-D123.211/0004-DSB/2018□

discussed and noted the following:□

"There is no doubt that the person concerned, in the case of an application-related right -□

such as that according to § 27 Para. 1 Z 2 DSG 2000 - must be free, as a "minus" also the□

Request deletion of only part of the data (partial right of deletion). this□

arises on the one hand from the above-cited decision of the Supreme Court ("Although § 28□

Para. 2 DSG [2000] only speaks of an objection to being included in a file,□

the person concerned is free to delete only a part of the data as a mere minus□

to request entry") but also from the fact that certain personal data□

(i.e. also parts of a data record) of a person concerned no longer meets the requirements of the□

Accuracy or timeliness may correspond, while this is still the case for other parts of the data□

may be the case. In this case it must be possible, even only parts of the data set□

to be deleted in order to continue to comply with the principles of § 6 DSG 2000.□

If a client/responsible person believes that a partial□

If a request for deletion cannot be met, the relevant ones are relevant□

Reasons - within the period provided for this purpose - to inform the person concerned, namely□

in a way that is beneficial for the person concerned, but also for the

Data protection authority, which (now according to Art. 77 DSGVO) can be called upon,

it is understandable why the request was not (fully) complied with (cf.

in relation to the right to information, the decision of the data protection authority of

27 October 2014, GZ DSB-D122.215/0004-DSB/2014)."

Against the background of the consideration that it is the intention of the

European legislator was to strengthen the rights of those affected (cf. the finding

of the Federal Administrative Court of September 27, 2018, GZ W214 2127449-1), there is no apparent reason

not to transfer this Rsp to the new legal situation. The data protection authority leaves

therefore also according to the current legal situation, it is assumed that data subject rights

in principle also partially, i.e. only with regard to certain personal data,

can be exercised

## 2. On the accountability of a controller

Unlike the decision of the data protection authority of December 5 cited in the quotation

2018 underlying facts, the Respondent in the present

Case further brought up that the implementation of a partial contradiction

or a partial deletion of personal data in your system technically

cannot be implemented.

In this context, the first point to be made is that anchored in the GDPR

Pointing out the accountability of a person responsible:

According to Art. 5 Para. 2 GDPR is a person responsible for compliance with the GDPR

inherent principles, including the principle of fair processing

Faith according to paragraph 1 lit. a leg. cit., responsible and must ensure compliance

can prove.

Subsequently, Art. 24 Para. 1 GDPR standardizes in a similar way that a

Responsible taking into account the type, scope, circumstances and

Purposes of the processing as well as the different probability of occurrence and

Appropriate severity of the risks to the rights and freedoms of individuals

has to implement technical and organizational measures to ensure and

to be able to prove that the processing is carried out in accordance with this

Regulation made.

Aspects of accountability can also be found in Art. 25 (1) GDPR

enshrined principle of "Privacy through Technology", according to which the means of processing,

i.e. products, services and applications, both at the time of determination

the means for processing and at the time of the actual processing

are to be chosen in such a way that the requirements of the GDPR can be met (cf.

Baumgartner in Ehmann/Selmayr (eds.), DS-GVO2 [2018] Art. 25 margin no. 2; see also

Hötzendorfer in Gantschacher/Jelinek/Schmidl/Spanberger (eds.), Commentary on

General Data Protection Regulation [2017] Art. 25 Note 3).

Based on this accountability, it can be stated in general that a

responsible for compliance with its obligations imposed by the GDPR

can thereby withdraw by making such unsuitable technical and organizational

takes measures that make it impossible for him, among other things, to respond to the requests of those affected

to match people.

3. To the bonus program (N\*\*\* regular customer club)

In the present case, the Respondent offered to transfer all data of the

to delete the complainant in the N\*\*\* regular customer club. Nevertheless, it must be checked whether

it is also obliged to do so, taking into account the type, scope and circumstances

and the purposes of the processing as well as the different probability of occurrence

and the seriousness of the technical and technical risks of the processing in question

to take organizational measures to meet the partial applications of the

to comply with the complainant.

In the decision of December 5, 2018 cited above, the data protection authority assumed this□  
from that a credit bureau requiring the partial deletion of certain information□  
refuses and deletes all personal data in excess, against the□  
Principle of good faith processing in accordance with Article 5(1)(a) GDPR□  
acts. The main consideration was that the economic advancement of a□  
data subject who merely wants the complete deletion or correction of their□  
Information from a creditworthiness database can request, made more difficult or prevented□  
is, since companies regularly make business decisions from the identification□  
make dependent on a person in a credit rating database.□  
However, such a risk is not recognizable in the present case:□  
The result of a complete deletion, which the Respondent also offered□  
would not impede or prevent economic advancement,□  
only that the complainant no longer participates in the N\*\*\* customer club□  
and can take advantage of the associated benefits; such□  
According to current general life experience, there are no perks either□  
such an economic advantage, that of a disadvantage for those customers□  
would be assumed that do not participate in the N \*\*\* customer club.□  
The DPA believes that the fundamental right to protection□  
personal data in accordance with Art. 8 Para. 1 EU-GRC, which is contained in the GDPR□  
is concretized, can not only be understood as a defensive right, but that a□  
affected person independently within the scope of their informational self-determination□  
- of course within certain limits - about the handling of their personal data□  
can dispose of data (cf. the decision of the DSB of March 7, 2019, GZ DSB-□  
D130.033/0003-DSB/2019 and from November 30, 2018, GZ DSB-D122.931/0003-□  
DSB/2018).□

Based on this, the data protection authority is also of the opinion that a data subject□

person consent with regard to participation in bonus programs to which it

inherent is that certain information is collected from participants and in return

for this, discounts, credits and promotions are provided, among those set out in the

GDPR mentioned requirements.

An essential requirement for such consent is a sufficient level of

Being informed (cf. recital 32 first sentence GDPR) and are sufficient guarantees (cf.

Art. 24 para. 1 GDPR) to protect the rights and freedoms of a data subject.

This was initially confirmed by the Respondent through a corresponding

Privacy Policy guaranteed to the complainant before registering with

N \*\*\* regular customer club was undisputedly available for information. In this

The data protection declaration is also informed, among other things, that the data "Purchasing behavior:

Place of purchase (branch), product and product category, use of offers and promotions

when purchasing the goods/products, duration of participation/frequency and similarity determination

processed with other of our customers"; also was expressly about the the

corresponding storage period. Misleading or deceiving by the

Respondent with regard to the processing of personal data

therefore not before.

Furthermore, the Respondent has in its with the bonus program in

Related system implemented a "lock flag" to a

implement any objection by a data subject to profiling activities

be able.

Furthermore, there are no indications that the collected

personal data of the complainant inadmissibly (further) used

or that other obligations imposed by the GDPR, such as in particular

the obligation to ensure the security of processing in accordance with Art. 32 GDPR,

would be injured; however, it should be noted that any violation



of these obligations was also not criticized by the complainant and therefore□

was not the subject of the investigation.□

Finally, it should be noted that the GDPR according to Art. 1 Para. 2 in conjunction with Recital 4 second set□

not only serves to protect personal data, but **an appropriate one**□

**Compensation with the other rights recognized in the European legal area and**□

**freedoms should be created**. A partial deletion, as by the complainant□

desired, but in the present case would mean that the Respondent□

your bonus program, **the design of which you decide within the framework of private autonomy and in**□

**within the framework of their freedom to work**, cannot operate.□

#### 4. Result□

Taking all of these considerations into account, **the complainant is specific**□

**If no right to concede to the N \*\*\* customer club under unilateral determination of the**□

**to participate in the processed data categories and is therefore not subject to any violation of the**□

**Principle of good faith processing in accordance with Article 5 (1) (a) GDPR**□

as well as the accountability according to Art. 24 Para. 1 DSGVO and subsequently also from□

no violation of the right to erasure according to Art. 17 GDPR and the right to□

Objection according to Art. 21 GDPR.□

As a result, the complainant has the partial request for deletion and the□

partial application for objection was rightly not complied with and was also not required,□

to take appropriate technical and organizational measures to ensure this□

enable.□

It was therefore to be decided accordingly.□