

GZ: 2020-0.191.240 from May 25th, 2020 (process number: DSB-D124.1182)□

[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 A\*\*\*pharma□

GmbH (appellant) from \*\*\*\* U\*\*\*, represented by L\*\*\* B\*\*\* Rechtsanwälte GmbH□

& Co KG in \*\*\*\* H\*\*\*, of August 1, 2019 against the Federal Office for Security im□

Healthcare (Respondent, subsequently also BASG) due to injury in□

Right to secrecy (§ 1 Para. 1 DSG) as follows:□

- The complaint is **dismissed as unsubstantiated**.□

Legal basis: Art. 51 (1), Art. 57 (1) lit. f and Art. 77 (1) of the Regulation (EU)□

2016/679 (General Data Protection Regulation, hereinafter: GDPR), OJ No. L 119 of□

May 4, 2016 p. 1; Article 16 of the Treaty on the Functioning of the European Union (TFEU),□

OJ No C 202 of 7.6.2016, p.1; Art. 8 of the Charter of Fundamental Rights of the European Union□

(EU-GRC), OJ No. C 202 of 7.6.2016, p. 389; §§ 1, 18 paragraph 1 and 24 paragraph 1 and paragraph 5□

of the Data Protection Act□

(DSG), Federal Law Gazette I No. 165/1999□

idgF;□

§§ 62 et seq□

of□

Medicinal Products Act (AMG), Federal Law Gazette No. 185/1983 as amended; §§ 1 ff of the pharmaceutical company regulati□

2009□

(AMBO 2009), Federal Law Gazette II No. 324/2008□

idgF; § 6a of the health and□

Food Safety Act (GESG), Federal Law Gazette I No. 63/2002 as amended.□

REASON□

A. Submissions of the parties and course of the proceedings□

Claims of the complainant:□

1.□

In her email dated August 1, 2019 and sent on the same day to the□

Complaint received by the Data Protection Authority□

legally represented□

complainant□

(upon submission of documents Enclosures .A to .C) The following□

submitted: You consider yourself through unlawful collection, processing and disclosure□

as well as failure to officially delete your personal data by the□

Respondent since March 14, 2019□

in□

their right to secrecy□

personal data according to § 1 Abs. 1 DSG violated.□

2. The complainant has the power under trade law pursuant to Section 116 (1) no. 5□

GewO 1994 on the wholesale of medicines and poisons and on the permit in accordance with□

Section 63 AMG for working as a pharmaceutical wholesaler. The Respondent□

on March 14, 2019 I officially had an extraordinary - therefore unannounced -□

Tax audit procedures initiated, based on § 68 AMG. the□

The audit took place on the complainant's premises. the□

official definition of the purpose of the official act has "review of the supplier□

and customer qualification, as well as the current list of traded medicinal products". the□

However, the Respondent's inspectors would also inspect the premises□

carried out by the complainant, photographs of packages of the medicinal product "P\*\*\*\*"□

made and threatened without reason to close the complainant's camp. the□

The complainant's authorized officer present, Mr Alfred O\*\*\*, MSc, was questioned and under□

reference to the purpose of "customer and supplier qualification",□

Supplier lists, customer lists and□

in particular various accounting documents□

submitted and copies made to the BASG. In total, this has five file folders□

full of documents, which mainly consisted of invoices.□

In view of the existing "pressure situation", these documents are also at the□

handed over to the respondent. These documents are in the record of the official act□

listed as appendices 1 to 12.□

3. However, the corresponding information is partly inaccurate, as there are also invoice documents□

were taken via the E\*\*\* pharmacy, which were not from 2019, but□

were already from December 2018. Even a superficial examination that was not carried out□

would have shown the Respondent's inspectors that these business records (a)□

are not kept in connection with an obligation under pharmaceutical law and (b)□

not taken as part of a § 68 AMG tax audit and their data content not for□

should have been processed for this purpose. Legally, there is a disregard for□

party rights of the complainant. Taking business documents with you as well□

the production of photographs is not covered by Section 68 AMG. The real purpose of□

The complainant is still unaware of the official act, a corresponding written one□

The respondent did not answer the request.□

4. The Respondent also failed to do so immediately following the taking away□

of the business documents to check whether this entrainment is covered by the purpose of the official act□

was and, if necessary, to delete those business documents for which this does not apply.□

This obligation arises from the fundamental right to data protection itself, were this in  
its vertical effect but ineffective if an ex officio obligation to delete  
of unnecessary and unlawfully processed personal data  
would exist.

5. As far as the complainant is aware, the business documents are also third parties  
been disclosed or transmitted without legal reason. Specifically, a transmission by means  
automation-supported data traffic to, among others, the Austrian  
Chamber of Pharmacists takes place. From the complainant's point of view, the respondent also has  
with regard to this data transmission violated their rights, since data which the authority does not  
was allowed to process, nor may it be transmitted to third parties.

6. Since the tax audit of March 14, 2019, inspectors of the respondent  
further in contact with existing and potential business partners of the complainant  
occur (three concrete cases were described) and with reference to the "informal"  
character of the conversation to warn of "problems" arising from business relationships with the  
complainant could arise.

In the course of these talks were also  
personal data of the complainant was unlawfully transmitted.

7. The complainant's fundamental right to data protection pursuant to Section 1 (1) DSG  
violated (i) by taking and subsequent processing of the photos; (ii) by the  
Processing (taking along and storing or entering into the file system of the authority)  
the business records; (iii) by unlawfully disclosing business records  
to the Austrian Chamber of Pharmacists (and any other entities); (iv) by the  
Unlawful disclosure of business records to existing and potential  
future business partners of the complainant; (v) by the Unlawful Notice  
inaccurate personal data to existing and potential  
future business partners of the complainant

in connection with a

alleged investigation against the complainant and in this connection

at least suggested conduct of administrative penal law and/or criminal law

Proceedings concerning the complainant and the threat of "trouble" for the

Complainant and/or its business partners; (vi) by failing to delete

all those personal data which - albeit only after the official act of

March 14, 2019 - turned out to be unlawfully processed.

8. The complainant, as a legal entity, is responsible for enforcing its subjective

Actively legitimized right to data protection in accordance with § 1 DSG. In the business documents dated

Respondent would be processed, it is personal data

complainant. On the one hand, this is determined individually directly by your company

and on the other hand indirectly identifying features (e.g. invoice number,

Abbreviations) determinable. By assignment to an act or a clear one

electronic number will also include photographs of personal data

complainant. Whether in a photograph of a natural person or the company

Appellant is recognizable is irrelevant in this context.

9. With a company like the complainant there is a protection worthy

Confidentiality interest in business secrets, including business documents,

which two other (legal) persons have issued to each other, already due

that of the complainant

relevant obligation to maintain secrecy of such

Business records are worth protecting.

10. The Data Protection Deregulation Act 2018 has the statutory part of the DSG

not limited to the protection of natural persons. Even if this were so, there would be one

unplanned gap, which would have to be closed by analogy, since a

Provision that protects the subjective rights of a person with constitutional status, never

should remain without the possibility of enforcement.□

11. The Respondent's official act of March 14, 2019 was unlawful because□

an extraordinary audit primarily for the inspection of facilities and□

Means of transport, the manner of storage and transport, such as the□

compliance with the cold chain of medicinal products. The procedure according to § 68 AMG is not□

Administrative penal proceedings and do not have the purpose of circumventing party rights□

administrative penal proceedings additional - otherwise unobtainable - exploratory evidence□

enable. The inspection and copying is legally only with regard to□

Documents are permitted that are to be kept according to the provisions of pharmaceutical law. Lower□

Section VII (§§ 62 to 71a) of the AMG and the AMBO 2009 are to be understood for the latter.□

In the case of a tax audit in accordance with AMBO 2009, quality assurance is particularly important□

Storage and distribution of medicinal products is the subject of the case. The guidelines of□

European Commission of November 5th, 2013 for good distribution practice for medicinal products for human use,□

which are based on Articles 84 and 85b (3) of Directive 2001/83/EC (GDP guidelines).□

no directly applicable legal basis. Regarding photography and others□

Evidence-gathering is also required and would be a necessity test□

the principle of the least severe means should have been applied in terms of data protection law.□

12. It can be based on pharmaceutical regulations with regard to customer qualifications□

as well as supplier qualifications and the purpose "List of traded medicinal products"□

on the part of the respondent, only documents can be inspected,□

which (i) the identity of business partners as well as (ii) traded drugs□

record this (but no quantity information). There is no entitlement□

Furthermore. Therefore, sales, the specific business model and others□

Company internals, also within the procedure according to § 68 AMG, from the fundamental right□

Data protection recorded and protected and ensure their processing by the respondent□

therefore constitutes an unlawful interference.□

13. This concern □

in any case □

the following, □

for a § 68 AMG company inspection □

Complainant (purpose limitation: "Review of supplier and customer qualification, □

as well as the current list of traded medicinal products") Non-essential data: □

a. Appendix 2: Entire inventory list A\*\*\*pharma due date 14.3.2019; □

b. Appendix 4: Example for delivery from the F\*\*\* pharmacy (wholesale) to the A\*\*\*pharma; □

c. Appendix 5: Transport order letter for collection from pharmacies on behalf of E\*\*\* □

Pharmacy (wholesale), 24 pieces \*R.1\*848\*47.1 1\*; □

i.e. Annex 6: List of the supply sources of E\*\*\* and F\*\*\* as well as A\*\*\*pharma direct □

delivery; □

e. Appendix 7: Copy of the logistics contract with F\*\*\* Apotheke KG; □

f. Appendix 8: Copy of the logistics contract with E\*\*\* Apotheke KG; □

G. Attachment 9: Copy of business agreements with E\*\*\* Apotheke KG; □

H. Attachment 11: Copy of the documents of all wholesale-related from the E\*\*\* pharmacy □

Pharmaceuticals (January to March 2019); □

i. Appendix 12: Copies of the documents of all purchased from the F\*\*\* Apotheke wholesale □

Medicines (January to March from 2019). □

14. As already explained, the Respondent has the latest after the inspection has taken place □

unlawfully refrain from ex officio data deletion required by these documents. □

15. Since Section 80 (1) AMG only transmits to ensure drug safety □

of the complainant's personal data to the persons listed in paragraph 3 leg. cit. mentioned □

Recipients allow this provision does not carry the transmission of internal business information □

Appellant to the Chamber of Pharmacists. □

16. The complainant would also have the right to secrecy according to § 1 para. 1 DSG before a □

protect the oral transmission of their data. Therefore, the talks would be from □

Respondent's inspectors with various third parties, regardless of the issue of □

Accuracy or inaccuracy of content, data transfers that have a legal basis □

which the Respondent has to present. □

17. The complainant submitted the requests that the data protection authority should "according to § 24 DSG □

per analogiam" for violation of the right to data protection according to § 1 DSG, □

a. conduct a complaints procedure, □

b. the unlawfulness of the processing of said personal data □

determine, in particular, the illegality of □

- Collection of business documents and their further processing in the course of □

Official act of the Respondent on March 14, 2019 (in point 5.1.7 of the complaint □

enumerated); □

- Collection in the course of the official act of the respondent on March 14, 2019 in point □

2.1 mentioned photos and their further processing; such as □

- Disclosure of personal data from or □

in connection with the □

Official act of March 14, 2019, such as in particular by verbal notification or suspension □

of business documents or the suggestion of administrative penal law and / or □

criminal matters relating to the threat of "trouble" and □

naming the company of the complainant or her authorized representative □

Organs to third party data recipients such as □

especially existing ones □

business partner of the complainant; □

- Disclosure of personal data from or □

in connection with the □

Official act of March 14, 2019, in particular through the assertion or allusion of □



administrative criminal law□

and or□

criminal□

facts□

under□

Naming of the company of the complainant or her authorized representative□

Organs to third party data recipients such as□

especially existing ones□

business partners of the complainant.□

18. Furthermore, the Appellant suggested that the Respondent filed a complaint□

drawn "behaviour", in particular the transmission of business documents, photos as well as□

those from point b. their applications included verbal data transmissions, "according to §§ 25□

Para. 1 in conjunction with 22 para. 4 first case DSG per analogiam".□

Claims of the Respondent:□

19. The Respondent, by the Data Protection Authority by procedural order dated 2 August□

2019, GZ: DSB-D124.1182/0001-DSB/2019, prompted accordingly, held that in his□

Opinion dated August 30, 2019:□

20. The Respondent first contested the admissibility of the appeal route. the□

simple legal provisions□

of the DSG,□

in particular□

those,□

the□

that□

Complaints procedures are, like the GDPR itself, based on legal protection□

limited to natural persons. This is also the reason for the complainant's request,□

apply the provisions of the DSG, in particular §§ 24 f DSG, "per analogiam",

nothing to change.

21. The Respondent is responsible for the execution of the AMG according to § 6a GESG

Authority responsible for approval, improving the safety of medicines,

their risk assessment and assessment and the monitoring of traffic with them. To the

Achieving the goals of drug safety is not just for the respondent

allowed, but he is also obliged to process personal data and

Companies that place medicinal products on the market to check whether they are suitable for them

comply with applicable legal requirements.

22. A particular drug safety issue in the European Union and worldwide

would constitute counterfeit medicines currently on the market. Such would

contain inferior or fake ingredients or no ingredients at all, or ingredients that

including drugs that are incorrectly dosed so that they pose a significant threat to the

would represent public health. Past experience shows that such

counterfeit medicines not only illegally, but also through the legal supply chain

would get to the patients.

23. The processing of personal data by the respondent is in accordance with § 9

Para. 7 GESG lawful, provided that the processing is carried out in the course of the execution of statutory

Tasks according to § 6a GESG. Data processing for the purpose of

According to Section 9 (7) in conjunction with Section 6a (1) Z 1 GESG in conjunction with Section 67 ff in conjunction with Sect

Paragraph 1 AMG lawful. With regard to such processing, according to § 9 Para. 8 GESG

the rights and obligations according to Art. 13, 14, 18 and 21 GDPR are excluded. According to

Art. 9 (2) lit. i GDPR, the respondent is entitled to lawfully personal

to process data (special categories) of natural persons, since the processing

Reasons of public interest in the field of public health, in particular for

Ensuring high quality and safety standards for medicines, on the basis

of Union law or the law of a Member State. This must be done□

Equality considerations and also "per analogiam", also for the data of a□

legal person apply. Furthermore, applying the same considerations according to□

Art. 17 (3) lit. c in conjunction with Art. 9 (2) lit. i GDPR an exception to the obligation to delete,□

if this is necessary for the above reasons.□

24. Pursuant to Section 67 AMG, the Respondent has the right and the duty to inspect establishments pursuant to Section 62□

Para. 1 AMG before granting a permit in accordance with Section 63 Para. 1 AMG or if necessary□

before granting a permit in accordance with Section 65 (1) AMG and subsequently on the basis of a□

Risk assessment to periodically check whether the provisions of Section VII□

of the AMG or the ordinances issued on the basis of this section are complied with,□

and the quality necessary for human or animal health and life□

of the medicinal products or active substances is guaranteed. All processed by the Respondent□

Data are used to assess whether compliance with high quality and safety standards□

medicinal products and that medicinal product safety is guaranteed□

and thus lawfully processed with regard to the public interest in these objectives□

been.□

25. For the most part, the complainant does not make any supposed data protection law□

alleges violations, but complains about (alleged) violations of procedural rules□

and due diligence of the respondent (according to AVG, GEG and AMG, as well as the□

applicable regulations).□

26. During the period described by the complainant in her complaint under 1□

If the facts are confirmed as correct from the point of view of the respondent, this must be the case□

the following arguments are expressly disputed:□

27. The allegation that the complainant before the start of the inspection on March 14, 2019□

had been threatened without reason to close their camp is expressly denied. Right□

is that on the part of the respondent, organs of the public security service□

have been notified. This is because the clarification of the question of whether an element of the

Drug counterfeiting within the meaning of § 1 paragraph 25 AMG is present, because of the criminal liability of this

action falls within the competence of the safety authority. A data protection law

However, the relevance of this inclusion is not recognizable.

28. The allegation that the Respondent had the Appellant's employees in a

brought about a "pressure situation" and thereby caused the publication of business documents,

is expressly denied. As is customary and permissible for a company audit (see

§§ 62 ff AMG, §§ 15, 22, 29 and 30 AMBO) are proof of compliance with the statutory

required prerequisites, documents - but only those that are due to legal

obligations

out

the enforcement area

of the respondent

from

the

to lead the complainant - were asked. That the transfer of documents

was admissible, the complainant's employee who was present on the spot had herself contacted by telephone

confirmed by its manager. Then the handover is voluntary and without

any kind of involvement of the organs of the respondent takes place.

29. It is also not correct that business documents and the data contained therein without

each examination in relation to the purpose of the procedure and in large numbers ("five files")

copied, taken away and processed. The complainant would

processing in the sense of recording obligations. It's about the

The complainant's list of suppliers (Annex 1 to the record) for data which, in accordance with

§§ 3 para. 8 and 9, 15 para. 3, 22, 29 and 30 AMBO are to be processed. At the inventory list

of the complainant (Annex 2 to the record) is about data which according to §§ 15,

22 and 30 AMBO are to be processed. During the supplier qualification (Appendix 3 to

Minutes) are data which according to §§ 3, 15, 22, 29 and 30 AMBO

be processed. In the case of an invoice for the delivery of medicines to the

Complainant (Annex 4 to the record) concerns data which, according to §§ 3,

15, 22, 29, 30 AMBO to be processed. When writing the transport order (Annex 5 to

Minutes) are data to be processed in accordance with §§ 3, 15, 22, 30 AMBO

be. The list of suppliers (Annex 6 to the record) concerns data which

according to §§ 3 para. 8 and 9, 15 para. 3, 22, 29 and 30 AMBO are to be processed. At the

Logistics contract (Appendices 7 and 8 to the record) are data that are

§§ 3, 15, 22, 29 and 30 AMBO are to be processed. In the business agreement (Annex 9

for the record) it concerns data which according to §§ 3, 15, 22, 29 and 30 AMBO

be processed. It is the case with the receipts of medicines (Annex 10 to the record).

This is data that is to be processed in accordance with §§ 3, 15, 22, 29 and 30 AMBO. Both

Handle invoices relating to medicinal products purchased (Appendices 11 and 12 to the record).

it is data that is to be processed in accordance with §§ 3, 15, 22, 29 and 30 AMBO. the

Determination and further processing by the respondent is initially with

consent of the complainant,

but in any case covered by legal

Authorizations and public interests (drug supervision, drug safety) and in

lawful exercise of the Respondent according to §§ 63 ff AMG

public violence takes place.

30. With a quick review of the December folder shortly before the end of the inspection and after asking,

whether the medicines originated in December from other pharmacies than in 2019

had, this question could not be answered specifically. It is correct that this

further data collection was not included in the protocol.

31. However, in (analogue) application of the GDPR it should be stated that the

Respondent according to Art. 9 Para. 2 lit. i DSGVO lawfully personal data

(special categories) may process and this, if for the specific purpose

necessary

(public

interest

in public health), none

Obligation to delete (cf. Art. 17 Para. 3 lit. c in conjunction with Art. 9 Para. 2 lit. i GDPR). the

Allegation that the Respondent failed to check ex post whether the

Taking away - and processing - the copied business documents from the purpose of

Official action is covered, is denied. An examination in this regard was carried out immediately.

32. The result of this examination is, as explained in more detail by the respondent (statement of

August 30, 2019, pages 11 to 15) that the data and documents determined in their

majority for the purpose of the current official act. Regarding the rest

(Annexes 2, 11 and 12 to the record and the photographs) the deletion was ordered and

been accomplished.

33. The complainant's assertion that the business documents were also available to third parties, e.g.

the Austrian Chamber of Pharmacists, were disclosed or transmitted without legal reason,

will be denied in full. The appellant's arguments in this regard were

neither sufficiently substantiated, since in particular it is not stated which data specifically,

when and to whom should have been transmitted, nor would corresponding evidence

submitted, which is why it is not possible to comment on the content.

34. The assertion that the Respondent's organs with potential

business partners of the complainant were not only incorrect,

but also logically impossible. In the absence of knowledge of "potential" business partners,

and could not be contacted in any way. It is true that

Bodies of the respondent with the complainant in the course of the inspection of

March 14, 2019 announced or resulting from the business documents□

business partners had contacted. These contacts in the form of□

Inspections would be based on the Respondent's legal enforcement area□

lying (further) obligation to check whether the complainant or also□

possibly their contractual partners, possibly also through incitement or assistance according to § 7 VStG,□

against regulations□

the AMBO□

or□

of the AMG□

violated□

and□

in order to□

committed administrative offences. Regarding the accusation that in the course of□

surveys the complainant and its organs had been named, and□

this "disclosure" violated their (alleged) right to secrecy, it is declared that□

that disclosure actually took place.□

35. On the one hand, the corresponding disclosure concerned only data that was publicly available□

be (e.g. the company of the complainant or the name of its managing director), on□

other is the disclosure for truth research and to protect the rights of□

the corresponding official acts involved have been required. The processing of□

The complainant's data is therefore used to fulfill the legal obligations of the□

Respondent is subject, was necessary and was in the exercise of public authority□

carried out, which was assigned to the respondent. That made it lawful.□

36. Proceedings under Section 68 AMG are still being conducted against the complainant. It□

there is a suspicion of illegal sale of medicines from a pharmacy□

a pharmaceutical wholesaler, which violates pharmaceutical regulations. be it□

therefore had to be determined to what extent a perpetrator according to § 7 VStG existed in order to

if necessary, to report to the competent administrative penal authority. the

The transmission of a notification naturally involves the description of a specific situation

in advance.

37. The legitimacy of the applicant's application as a legal entity is contested, since the

DSGVO does not protect legal persons and an analogous application of Union law

Regulations on legal entities are eliminated. However, it is not disputed that

Business records and photographs may constitute personally identifiable information, but be theirs

processing has been lawful.

38. a

Inspection according to § 68 AMG serves to check compliance with all

pharmaceutical regulations and is not limited to compliance with the AMBO. § 3

Para. 9 AMBO 2009 requires that every pharmaceutical wholesaler in the case of procurement

of a drug from another drug wholesaler to check whether this

comply with good sales practice. This also includes checking whether the delivering

Pharmaceutical wholesalers with a corresponding permit in accordance with Section 63 (1) AMG or

via a corresponding permit from a competent authority in another EEA country

dispose According to this, the AMBO 2009 already stipulates that it should not only be checked whether the

Supplier has a corresponding permit, but that it should also be checked whether the good

sales practice is adhered to. Therefore, the obligation to check goes beyond a mere inspection

Register out. In order to check compliance with AMBO 2009, it may also inspect all of them

Documents are taken that provide information on whether, in particular, §§ 15, 22, 29

and 30 AMBO 2009 would be complied with.

39. A data transmission to the Chamber of Pharmacists or to pharmacists is permitted by § 80 Para. 3 Z 4

or paragraph 4 Z 1 AMG covered. Since the complainant such a data transfer

however, only as a conjecture, could not comment on it.



Claims of the complainant:□

40. The complainant replied in her statement of November 18, 2019 how□

follows:□

41. The extent of the data determined is not covered by Section 68 AMG. The respondent is□

not responsible for conducting administrative penal proceedings under the AMG, but have□

himself admitted to having determined data for the purposes of administrative penal proceedings. this□

represents a violation of the law because data had been illegally determined.□

42. The Respondent stated that it had officially deleted several documents,□

whereby he conceded that there was no legal basis for the processing of this data□

exist.□

43. It is incorrect that open proceedings are pending under Section 68 AMG. Section 68 (5) AMG□

provides that the respondent issues a certificate after completing an examination.□

Nothing of the sort has happened to date, so the proceedings can be regarded as over.□

B. Subject of Complaint□

44. The subject of the complaint is whether the Respondent is the Appellant□

has thereby violated the right to secrecy in the course of an on-site audit□

documents were viewed and duplicated on March 14, 2019 without there being a□

legal basis existed and parts of these documents are still being processed.□

The object of the complaint is also the question of whether the complainant in her□

right to secrecy was violated,□

by the Respondent data of□

complainant disclosed to third parties.□

However, it must be checked in advance whether the complainant as a legal entity at all□

application is legitimate.□

C. Findings of Facts□

45. With the complainant [Editor's note: in the original as a result of an obvious□

Editorial mistake "Respondent"] is a company with□

limited liability, entered in the commercial register for FN \*3\*8\*14 h, with registered office in \*\*\*\* U\*\*\*,□

K\*\*\*strasse \*6. It has a business license for the manufacture of medicines and□

Poisons and wholesale of medicines and poisons, limited to wholesale of□

Drugs and poisons according to § 116 para. 1 Z 5 GewO 1994 (entered with the GISA number□

\*7\*4\*22\*5) and has a permit according to § 63 AMG for the exercise of the activity□

as a pharmaceutical wholesaler.□

Evidence assessment: These findings result on the one hand from the undisputed□

arguments of the complainant and on the other hand from an ex officio inspection of the□

Company register (carried out on May 25, 2020) and in the GISA (also carried out on□

May 25, 2020).□

46. On March 14, 2019, between 11:30 a.m. and 6:45 p.m. at the applicant's registered office□

a tax audit according to § 68 AMG, which is partly carried out by the respondent's bodies□

with the involvement of organs of the public security service.□

object□

the official act was□

the□

"Examination□

the□

Suppliers-□

and□

Customer qualification, as well as the current list of medicinal products" with emphasis□

Inputs of the drug "P\*\*\*".□

In the course of the official act, the□

Respondent after reviewing documents pointed out that the suspicion□

exist that medicinal products are from unauthorized distributors□

(pharmacies without

wholesale licence) were issued to wholesalers. Furthermore, that medicines

that were intended for sale to private individuals on the basis of a medical prescription

to them, but directly or indirectly to pharmacies and/or wholesalers

were submitted. It was noted that further placing on the market of

pharmaceuticals constitutes an administrative offense contrary to the legal provisions

and the liability as a contributor according to § 7 VStG was pointed out.

The complainant was given the opportunity to do so in the course of the official act

to comment, but they refrained from doing so.

The complainant was instructed not to make any contact until March 15, 10:00 a.m.

with the E\*\*\* pharmacy and the F\*\*\* pharmacy and their wholesale in relation to the ongoing

to refrain from surveys.

Several photographs were taken both in the warehouse and in the office.

The following documents of the complainant were provided by the respondent

taken away:

a) Annex 1: Supplier list of A\*\*\*pharma (19 suppliers)

b) Appendix 2: Entire inventory list A\*\*\*pharma, effective date March 14, 2019

c) Appendix 3: E\*\*\* pharmacy GDP certificate (supplier qualification)

d) Appendix 4: Example for the delivery of the F\*\*\* pharmacy (wholesale) to the A\*\*\*pharma

e) Appendix 5: Transport order letter for collection from pharmacies on behalf of E\*\*\*

Pharmacy (Wholesale), 24 pieces

f) Annex 6: List of the supply sources of E\*\*\* and F\*\*\* as well as A\*\*\*pharma direct

delivery

g) Appendix 7: Copy of the logistics contract with F\*\*\* Apotheke KG

h) Appendix 8: Copy of the logistics contract with E\*\*\* Apotheke KG

i) Annex 10: Entrances P\*\*\* from January 1, 2019

j) Appendix 11: Copies of the documents of all purchased from E\*\*\* Apotheke wholesale

Medicines (January to March 2019)

k) Appendix 12: Copies of the documents of all purchased from the F\*\*\* Apotheke wholesale

Medicines (January to March 2019)

Furthermore, photographs of invoices from a pharmacy to the E\*\*\* pharmacy were made.

Invoice documents for the E\*\*\* Apotheke wholesale were also taken away,

which are from December 2018.

Evidence assessment: These findings result from the data protection authority's part

minutes of the official act submitted to the complainant on March 14, 2019.

The statement that invoice documents for the E\*\*\* pharmacy wholesale from

December 2018 - and not only, as stated in the transcript, from January to

March 2019 - were taken, results on the one hand from the complaint,

on the other hand also from the Respondent's statement of August 30, 2019, in

who admitted that this data collection was not included in the minutes.

47. The data according to Annex 10, Annex 9, Annex 2, Annex 11 and Annex 12 as well as the

made photographs were after a

in-depth examination by the

Respondent deemed unnecessary for the purpose of the audit and deleted.

Evidence assessment: These findings result from the undisputed opinion

of the Respondent of August 30, 2019.

48. After the official act on March 14, 2019, personal data of

Complainant - namely at least the company, the fact that it is being investigated and the

Insinuation that the complainant

behave unlawfully – by the

Respondent disclosed to at least the following third parties:

a) Mag. Elsa V\*\*\*, E\*\*\* Pharmacy

b) Mag. W\*\*\*, F\*\*\* pharmacy□

c) Mag. Roberta G\*\*\*, L\*\*\* Pharmacy T\*\*\*□

The E\*\*\* pharmacy, the F\*\*\* pharmacy and the L\*\*\* pharmacy T\*\*\* are public pharmacies.□

Furthermore, this data was given to others, but not known by name, in the course of the□

Official act on March 14, 2019 from business partners of the complainant□

disclosed.□

It can't□

it can be established that the complainant's data was□

Respondents were transmitted to other third parties, in particular the Chamber of Pharmacists.□

Evidence assessment: On the one hand, the data protection authority follows the comprehensible ones□

remarks in the complaint. The traceability results from the fact that the□

The recipient named by the complainant subsequently ended the business relationship with□

appellant essential□

reduced□

or□

at least□

announced□

the□

to reconsider the business relationship. It is therefore evident for the data protection authority that these□

Steps directly related to the official act on March 14, 2019□

which at least two of the named recipients (E\*\*\* and F\*\*\* pharmacy) played a role.□

Furthermore, these findings result from the statement of the Respondent□

of August 30, 2019, in which this conceded, with those business partners of□

Complainant to have contacted, which from the business documents of□

Complainant could be identified, but without naming her.□

The determination regarding the E\*\*\*, F\*\*\* and L\*\*\* pharmacy T\*\*\* is based on an official decision□

Check the website of the Austrian Chamber of Pharmacists.□

The negative finding is based on the fact that in the complaint other than the□

named recipients are named globally (potential future business partners), as well□

like the Chamber of Pharmacists, but the Appellant is guilty of any proof□

remained that such data transfers took place. Also leaves the opinion□

of the Respondent of August 30, 2019 nothing of the sort.□

D. In legal terms it follows that:□

D.1. On the relationship between § 1 DSG and Art. 8 EU-GRC as well as on the legitimacy of the application□

complainant□

49. The complainant affirms its legitimacy to lodge a complaint as a legal entity and refers□

in this regard to § 1 DSG, which still protects legal entities.□

50. The Respondent contests the legitimacy of the complaint and relies on the GDPR,□

which expressly protects only natural persons.□

51. The Data Protection Authority has already in its decision of September 13, 2018,□

GZ: DSB-D216.713/0006-DSB/2018, the application legitimacy of a legal entity at a□

alleged violation of the right to secrecy. Due to the fact that the□

Application legitimacy now - unlike in that situation, that of the cited decision□

was based - is expressly disputed, the data protection authority feels compelled to its□

Legal view in more detail:□

52. The question of whether legal persons invoke rights under the DSG and the GDPR□

and can also enforce them□

is□

controversial in the literature□

(declining□

Anderl/Hörlsberger/Müller, No ordinary legal protection for data of legal entities, in□

ÖJZ 3/2018, S 7 ff; Kriegner, comments on § 1 DSG after the data protection law came into force□

Basic Regulation (DSGVO), wbl 2019, p. 79 ff.; approving Lachmayer in Knyrim, DatKomm

Article 1

GDPR

(Was standing

1.12.2018,

rdb.at);

doubler

in

Bresich/Dopplinger/Dörnhöfer/Kunnert/Riedl, DSG § 1 (as of June 12, 2018, rdb.at); gamper in

Gantschacher†/Jelinek/Schmidl/Spanberger, Commentary on the Data Protection Act [2018], § 1).

53. First of all, it should be noted that the statement that Art. 8 EU-GRC and the GDPR would be legal

Do not protect people, does not apply in this general way. The ECJ has already done so

stated that the scope of protection of Art. 8 EU-GRC does indeed apply to legal entities

included, but only to a very limited extent. In judgment of 9 November 2010, C-92/09 and C-93/09,

he stated in margin no. 53 that the area of protection is opened up in any case if the company

legal person the name of a natural person is used. This legal view

was upheld in decision of 22 November 2017, T-670/16.

54. In the present case, the complainant's company (A\*\*\*pharma) does not contain the name

a natural person, which is why the case law of the ECJ is not relevant.

55. § 1 DSG protects - even opponents of the protection of legal persons do not do so

disputed – including legal entities. In this respect, the scope of protection of § 1 DSG goes beyond that

of Art. 8 EU-GRC (and thus also beyond the GDPR). It is questionable, however, whether given

the full harmonization of the protection of personal data, this "overhang"

applied. Furthermore, it is questionable whether – if the first question is answered in the affirmative – the

simple legal part of the DSG, in particular the regulations on the complaints procedure

before the data protection authority, are open to legal entities.

a) To the possibility, too□

legal persons□

in the fundamental right to data protection□

to include□

56. Under Article 16(2) TFEU, the Union has competence to enact regulations on□

the protection of natural persons in the processing of personal data by the□

Member States in the exercise of activities falling within the scope of the□

fall under Union law.□

57. According to Art. 8 EU-GRC, too – following the case law of the ECJ□

- within the scope of Union law, in principle only natural persons on the□

scope of protection of this standard.□

58. To the extent that a situation falls within the scope of Art. 8 EU-GRC, have□

on the one hand, any constitutional provisions that offer the same guarantee, im□

Scope of this agreement to remain "dormant in effect" and judgement□

exclusively according to the provisions of Union law (cf. the recent decision of the□

German Federal Constitutional Court of November 6, 2019, GZ 1 BvR 276/17, margin no. 47 ff; see.□

also VfSlg. 19.632/2012, where the Constitutional Court has already ruled□

that he, in the case of conformity of constitutionally guaranteed rights with□

the EU-GRC uses the latter as a control standard).□

59. On the other hand, this also means that the competence to issue regulations of the□

Union is limited to the protection of individuals, so Member States are not□

is denied any further protection – such as for legal entities□

guarantee (for details, see Lachmayer, loc.cit., margin no. 79 f).□

60. That a protection that goes beyond the requirements of the EU-GRC by constitutional□

guaranteed rights of the Member States is also possible, results from Art. 53□

EU-GRC stating that no provision of the EU-GRC shall be construed as a restriction or breach of□



Human rights and fundamental freedoms are to be interpreted, which - insofar as relevant here - by the constitutions of the member states are recognised.

61. According to the case law of the ECJ on Art. 53 EU-GRC, a constitutional

However, the more extensive protection guaranteed by the Member State does not lead to

this application either exceeds the level of protection of the EU-GRC as interpreted by the ECJ,

or the primacy, unity and effectiveness of Union law are adversely affected

(Judgment of February 26, 2013, C-399/11, paragraph 60 ff).

62. In the present case, it follows that:

The complainant as a legal entity can rely on the scope of protection of § 1 DSG in

appointed in its entirety, because on the one hand the competence of the Member States, one on the

EU-GRC to ensure more extensive protection exists and on the other hand through the

Inclusion of the protection of legal persons in the fundamental right to data protection according to § 1

DSG neither the level of protection of the EU-GRC, nor the primacy, unity and effectiveness

of Union law are affected.

b) To

Ask,

if

himself

legal persons

on

the

ordinary law

implementing provisions of the DSG

63. According to Section 4 (1) DSG, the provisions of the GDPR and the DSG apply to the whole or

partially automated processing of personal data of natural persons as well as for

the non-automated processing of personal data of natural persons who are

are stored or are to be stored in a file system.□

According to the will of the legislator, the ordinary legal provisions of the DSG,□

including the complaint according to § 24 DSG, therefore on the protection of natural persons□

limited.□

64. However, as explained above, Paragraph 1 of the DSG also protects legal persons. An interpretation□

of the ordinary legal provisions, in particular §§ 4 and 24 DSG, to that effect, only□

natural persons the possibility of lodging a complaint before the data protection authority□

granting legal, however, would not, against the background of these provisions□

of § 1 DSG impute content that violates equality and is therefore unconstitutional. It can dem□

The legislature is not supposed to be legal without a comprehensible reason□

Persons in pursuit of their constitutionally guaranteed rights roughly□

wanting to be treated differently from natural persons (this is also the result).□

Lachmayer, loc. cit., paragraph 82 ff; Dopplinger, loc.cit., margin no. 7).□

65. As a result, it can be stated that the complainant is active as a legal entity□

is legitimate to raise a complaint according to § 24 DSG before the data protection authority, if□

it claims an infringement of the rights guaranteed by § 1 DSG.□

D.2. In the matter□

The complaint turns out to be admissible, but unfounded.□

a) Regarding the scope of the data collected as part of the official act on March 14, 2019□

66. The complainant complains that personal data,□

namely, business records, overshooting by the Respondent, that is, over□

beyond what is required.□

67. First of all, it should be noted that business documents and the like insofar as personal□

Data can be qualified if they relate to an identified or identifiable person□

- here the complainant - (cf. per analogy Art. 4 Z 1 DSGVO; see□

also the quoted judgment of the ECJ of November 9, 2010, in which subsidies to□

(legal) persons have been qualified as personal data). Different than that□

Respondent believes that this is not "sensitive" data within the meaning of the□

Art. 9 para. 1 GDPR, because none of those named there have access to this data of a legal entity□

facts apply.□

68. Give the documents viewed and ultimately reproduced in the course of the official act□

Information about the complainant's business relationships, about her inventory and about□

the inventory. They refer to the complainant's business activities as□

licensed drug wholesaler. In doing so, they provide personal information□

data in the above sense.□

69. As noted, the data referred to as Annexes 1 to 12, as well as photographs and□

further invoices were raised by the Respondent. Portions of this data have been -□

as stated - after a more detailed review by the Respondent than□

recognized and deleted as not relevant to the procedure.□

70. In this context, the question therefore arises as to whether that took place on March 14, 2019□

data processing was proportionate and therefore lawful.□

71. First of all, it should be noted that the illegality of official action, which is□

Exercise of direct official command and coercive power - such as with□

searches etc. - Takes place as part of a complaint under Art. 130 Para. 1 Z 2 B-VG□

can be appealed to the competent administrative court. This mainly affects the□

claimed□

injury□

the□

one□

such□

official act□

underlying□

subject-specific legislation.□

72. However, this does not apply if a violation of data protection rights is alleged. In this case□

there is an exclusive competence of the data protection authority according to §§ 1□

and 24 DSG. An administrative court appealed to pursuant to Art. 130 Para. 1 Z 2 B-VG□

in this case to be declared incompetent (see VwSlg. 19.098 A/2015).□

73. The data protection authority is therefore - within the framework of § 1 DSG - responsible for the treatment of the□

responsible for the alleged infringement.□

74. However, the inspection authority of the data protection authority is subject to limits which are set by□

the so-called "ban on excess". According to the settled case law of□

Data Protection Commission/Data Protection Authority would a□

"[A]complaint request, the□

competent authority to collect data or use evidence□

prohibit, which they need to establish a fact to be determined by them□

believes will cause the Data Protection Commission - at least in part - to take the place of the□

competent authority occurs and indirectly via the denial of admissibility□

factual investigations arrogated a factual universal competence. That given this□

the principle of the fixed distribution of competences between state organs and the□

Fundamental right to a procedure before the statutory judge cannot be admissible is evident.□

The Data Protection Commission therefore assumes that its competence to assess the□

Admissibility of data determination in administrative procedures limited to the prohibition of excess□

is: If it is conceivable that the determined by an authority responsible for the matter□

The type and content of the data are suitable for determining the relevant facts□

Admissibility of the determination given from a data protection point of view. The Claim□

a more in-depth assessment of the suitability of the competent authority□

chosen investigative steps would interfere with the substantive jurisdiction of□

investigating authority cause against the from the right to a trial before the□

principle of the precise delimitation of the authority's competence to be derived from the legal judge□

according to objective criteria (VfSlg. 3156, 8349), in exact (VfSlg. 9937, 10.311) and unequivocally□

Weise (VfSlg. 11.288, 13.029, 13.816) (cf. e.g. the notice of March 7th□

2019, GZ: DSB-D123.154/0004-DSB/2019). This is also from the Federal Administrative Court□

recognized (see, for example, the finding of July 11, 2018, GZ: W214 2183935-1□

75. An authority's intervention in the fundamental right to data protection is only possible on the basis of a□

qualified legal basis (§ 1 Abs. 2 DSG).□

76. Pursuant to Section 67 (1) AMG, the Respondent has compelled companies pursuant to Section 62 (1) leg. cit. before□

Granting of a permit in accordance with Section 63 (1) leg. cit. or, if necessary, prior to issuance□

a permit in accordance with Section 65 (1) leg. cit. and subsequently on the basis of a risk assessment□

periodically to verify compliance with the provisions of this section or the on□

Reason this section will comply with regulations issued and those for health□

and the life of man or animal necessary quality of the medicines or□

active ingredients is guaranteed. For this purpose, according to § 68 para. 1 AMG, organs of□

Respondent entitled, according to § 62 Abs. 1 leg. cit. and facilities and□

Means of transport of such companies, which are operated by companies according to § 62 para. 1 leg. cit. with the□

Storage or transport have been commissioned, provided that these are for storage or□

Transport of medicines or active ingredients can serve to enter, inspect, to□

check and samples in the quantity required for an examination and inspection of the□

To take records of the operation, according to pharmaceutical regulations□

are kept, and copies thereof as well as photographs and video recordings in the company□

to be prepared if this is necessary to preserve evidence. You can also gain insight into the□

Certificate of the trade license that may be required in accordance with the GewO 1994□

be taken. These official acts are, except in the case of imminent danger, during the□

to carry out operating times.□

77. Sections 67 and 68 AMG therefore provide a legal basis within the meaning of Section 1(2) DSG for the□

Processing of certain data, so that there is no consent from the

concerned needs. It cannot therefore be said that it

for the

there is no legal basis at all for the data processing that is the subject of the procedure.

78. Section VII of the AMG, to which Section 67 (1) AMG refers,

reads

“Operating Rules”. § 62 AMG regulates the detailed requirements for the issuance of the

AMBO 2009, which must be observed by the pharmaceutical companies. Below is also

the stipulation that medicinal products should only be purchased from certain manufacturers or importers

may be, namely by those who have a permit according to § 63 AMG or a

appropriate authorization from a competent authority of another contracting party of the EEA

feature. The review on March 14, 2019 raised the suspicion that the

Appellant violated the provision, among other things, by taking medicinal products from

obtained from public pharmacies.

79. On the basis of the above statements on the prohibition of excess, the im

Data processed by the respondent in the course of the official act on March 14, 2019

not be regarded as contradicting § 1 DSG. The Respondent has in his

Opinion dated August 30, 2019 clearly demonstrated that these documents

at least conceivably relevant in the context of an examination according to §§ 67 and 68 AMG

could be. This above all against the background that the Respondent not only

Approval of the activities of pharmaceutical companies according to § 63 AMG is incumbent, but also the

Subsequent prescribing of conditions according to § 66 AMG or the withdrawal of a

Approval according to § 66a AMG or the imposition of interim measures in the event

imminent danger to human or animal health from medicinal products in accordance with Section 69

AMG. For all of these procedures, data collected in the course of an audit can be used

become, be relevant to the decision.

80. That subsequently several databases were officially deleted because they□

If it doesn't turn out to be relevant to the procedure after a thorough review, that doesn't change anything: it is□

namely to take into account that in the context of an unannounced official act, such as that□

dated March 14, 2019, only limited time is available to review documents and□

to secure any evidence relevant to the proceedings. Similar to a house search□

It is therefore characteristic of the nature of such official acts that after objects□

is searched for, of which it is unknown where they are (cf. again□

VwSlg. 19.098A/2015). This means that under certain circumstances data - at least initially -□

be processed excessively. However, this raises no concerns□

if a review is carried out promptly and irrelevant data is deleted.□

81. The complaint is therefore unfounded on this point.□

b) About the transmitted data□

82. The complainant further considers itself in its right to secrecy□

violated because the respondent had personal data resulting from the official act of□

March 14, 2019, disclosed to third parties.□

83. As established, only some of the data transfers complained of could be established. in the□

However, given the scope of these findings, the complaint proves to be partially justified:□

84. First of all, it should be noted that there was a violation of the right to secrecy on certain□

forms of transmission does not arrive. Electronic data transmissions are also excluded from § 1□

Para. 1 DSG includes oral communications□

(cf. the knowledge of□

Administrative Court of February 28, 2018, Ra 2015/04/0087 with further references).□

85. As noted, the complainant's data was demonstrably disclosed to representatives of the E\*\*\*□

Apotheke, the F\*\*\* Apotheke and the L\*\*\* Apotheke T\*\*\*. The Respondent□

does not deny this either and states that it is his job to check whether it is□

the suppliers of the complainant's contractual partners are companies in accordance with Section 62□

AMG acts as to whether the complainant's contractual partners comply with the provisions of the

AMBO 2009 and whether the Complainant is a principal or contributor under Article 7

VStG violates. In particular, there is a suspicion that pharmaceuticals are being illegally

unauthorized pharmacies (without a permit for pharmaceutical wholesale) to the

wholesale – and thus to the complainant – were handed over.

86. As far as the Respondent submits, also investigations into a possible main

and to have made a contribution, the following is to be answered:

87. It is not the task of the

Respondent, but the competent district administrative authorities

(cf. to

criminal investigations by a federal ministry instead of the public prosecutor's office

Notice of November 26, 2018, GZ: DSB-D216.697/0011-DSB/2018), since the leadership

such procedures and the imposition of administrative penalties under the AMG - and with it

related the authority to process personal data – not in the

Respondent's competence falls.

88. Notwithstanding this, the transmissions established turn out to be non-existent

unlawful:

89. As already stated above, there was a suspicion that medicinal products were being purchased illegally

from community pharmacies in the area. It can therefore, in order to determine the authoritative

Facts to which the respondent pursuant to Section 6a (3) GESG in conjunction with Section 39 AVG

is required not to be recognized as unlawful when surveys are conducted at those pharmacies

or business partners, from which drugs are suspected to be contrary to the

Specifications of the AMG and the AMBO 2009 were obtained. Such investigative steps

can conceivably provide usable investigation results that can be used in a procedure of

Respondent - especially according to §§ 66 ff AMG - can be relevant. Whether in the train

whose "trouble" was threatened or other irrelevant statements were made



not subject of a complaint procedure according to § 24 DSG.□

90. The complaint therefore turns out to be unfounded on this point too.□

c) Regarding the storage period of the data determined and the failure to delete it□

91. The complainant finally complains that the omission of the deletion of all those□

personal data, which - albeit only after the official act of□

14 March 2019 - found to be unlawfully processed, a violation of the right to□

secrecy justified.□

92. This objection is unfounded:□

93. First of all, on July 8, 2019, the complainant submitted a request for deletion to the□

Respondent addressed and therein requested the deletion of data. However, in□

expressly only the right to secrecy in accordance with the complaint initiating the procedure□

§ 1 para. 1 DSG cited as a right deemed violated. This is a matter for the procedure in□

Within the meaning of Section 13 (8) AVG, only the examination of whether a violation of this right has occurred. One□

Violation of the right to erasure, which according to § 1 Para. 3 Z 2 DSG legal entities□

is also open, therefore does not need to be examined. Otherwise there is a subjective right to□

Deletion only on the basis of a request from the person concerned to the person responsible. the□

However, there is no obligation on the part of the person responsible to delete their own data□

subjective right of the person concerned and any violation of this obligation can therefore□

a procedure according to § 24 DSG cannot be asserted (cf. already the□

Notice of July 25, 2014, GZ: DSB-D122.106/0008-DSB/2014 mwN).□

94. However, failure to erase or destroy may then constitute an infringement□

in the right to secrecy according to § 1 para. 1 DSG if data longer than necessary□

are kept (cf. with regard to unstructured paper files VfSlg. 19.937/2014). The□

GESG contains no provision as to the duration for which the Respondent□

can save determined data. Unless an express period is provided, it is after□

permitted by the case law of the Data Protection Authority, determined data for those limited□

Retain the period necessary to establish the legality of the official□

to verify actions. However, further retention of data must be carried out□

a specifically emerging procedure be justified. The mere possibility that a□

Procedure is (at some point) initiated, however, is not sufficient (see the decision□

from May 28, 2018, GZ: DSB-D216.471/0001-DSB/2018, mHa the knowledge of□

Constitutional Court of December 12, 2017, GZ: E 3249/2016).□

95. In the present case, the data was determined by the respondent on March 14, 2019. the□

The appellant subsequently made various requests to the respondent□

(Deletion, information according to AuskPflG). On August 1, 2019, the□

the relevant complaint has been lodged.□

96. Based on the above consideration, the elapsed time thus appears□

- also in view of the applications made or the strained procedure before the□

Data Protection Authority - not so long that the failure to delete a□

violation of the right to secrecy. This is mainly because the identified□

data play a role in the applications or procedures submitted.□

97. The complaint was therefore to be dismissed on this point.□

D.3. summary□

98. The complaint therefore turns out to be unfounded overall, which is why it is dismissed pursuant to Section 24(5).□

last sentence DSG was to be rejected.□