



noyb - European Centre for Digital Rights  
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AUSTRIA

## COMPLAINT UNDER ARTICLES 77(1), 80(1) DSGVO

**noyb Case No: C028**

### **introduced by**

noyb - European Centre for Digital Rights, a non-profit organisation with headquarters at Goldschlagstraße 172/4/2, 1140 Vienna, ZVR: 1354838270 (hereinafter "noyb")

### **against**

CRIF GmbH, FN 200570g, Rothschildplatz 3/Top 3.06.B, Vienna, info.at@crif.com (hereinafter "CRIF").

### **1. REPRESENTATION**

1. *noyb is acting on behalf of Mr [REDACTED], born on [REDACTED] 1988, residing at [REDACTED] [REDACTED] (hereinafter referred to as the "complainant").*
2. *According to Article 80(1) of the DPA, a data subject "shall have the right to request a non-profit body, organisation or association, which is constituted in accordance with the law of a Member State, has statutory objectives in the public interest and is active in protecting the rights and freedoms of data subjects with regard to the protection of their personal data, to lodge a complaint on his or her behalf, to exercise on his or her behalf the rights referred to in Articles 77, 78 and 79, and to seek compensation for damage pursuant to Article 82, where this is provided for in the law of the Member States."*
3. *noyb is a non-profit organisation that is active in the field of data protection (Association Statutes, Supplement 1). The complainant has commissioned noyb to represent him in accordance with Article 80(1) DSGVO (Enclosure 2).*
4. **Communication between noyb and the data protection authority in the context of this procedure can be made by e-mail to [REDACTED] with reference to the case number mentioned in the title of this complaint.**

## 2. PROPERTY CONDITIONS

### 2.1. Refusal by an energy supplier to conclude a contract on the basis of the complainant's allegedly insufficient creditworthiness

5. On 30 July 2019, the complainant placed an online order for an energy supply contract with the energy supplier [REDACTED]  
[REDACTED]
6. About 20 minutes after the order, [REDACTED] the complainant by e-mail that they had to cancel his order "due to an insufficient credit check" (Enclosure 3, page 1).
7. The complainant immediately called [REDACTED] customer service to clarify what was meant by "insufficient credit check". [REDACTED] informed him that they had checked his creditworthiness with CRIF, a credit reference agency, which had returned a "medium" credit score to [REDACTED]
8. The complainant subsequently sent a request for information pursuant to Article 15 of the DSGVO to CRIF by e-mail on the same day. CRIF replied by e-mail of 31.07.2019, stating that they had not kept any data on him (Annex 4); see in particular point 2.2 below.
9. The complainant could not understand
  - how CRIF could provide [REDACTED] with information on its creditworthiness if CRIF did not in fact keep data on it, and
  - on the basis of which information [REDACTED] had given a negative assessment of the complainant's creditworthiness and consequently refused to conclude an energy supply contract with it.

On 31 July 2019, the complainant therefore asked [REDACTED] to explain how they had made a negative assessment of its creditworthiness (Annex 3, bottom of page 2)
10. [REDACTED] replied on the same day that they had rejected the complainant's request to conclude an energy supply contract not because of the complainant's possible negative creditworthiness but because CRIF had assigned it a credit score of less than 650 points (Annex 3, top of page 2):

*"Your query results in a score of 446 points - a score of 650 points is required for successful delivery by [REDACTED]"*

[REDACTED] attached to its reply a screenshot showing that CRIF had indeed assigned a numerical credit rating to the complainant (Attachment 5, hereinafter "the screenshot"). According to the screenshot, the complainant's credit rating was 446 points. Furthermore, CRIF had apparently assigned the complainant a "yellow light". The "type of hit" mentioned in the screenshot is "budget hit", although it is unclear to the complainant what is meant by this. The score of 446 and the "budget hit" are given as the reason for the decision.



11. On the same day (31 September 2019), the complainant submitted to [REDACTED] the reply that he had received from CRIF (Annex 4), in which CRIF stated that it did not have any data concerning him. The complainant asked what data [REDACTED] had provided CRIF with for its credit rating, given that he had no debts or financial problems. He also raised the question as to whether his address (building), where other persons lived, rather than his name, had possibly been assessed (Annex 6, at the bottom of page 1 and page 2).
12. [REDACTED] replied five minutes later that the check had been carried out on the basis of the complainant's "person, name and date of birth". (Enclosure 6, bottom of page 1)
13. On 5 August 2019, the complainant replied and asked whether [REDACTED] was aware that a "yellow" credit rating by CRIF meant - to the complainant's knowledge - that CRIF did not have any data concerning anybody. [REDACTED] did not reply (Annex 6, page 1).
14. Finally, on 13.08.2019, the complainant sent a request for information pursuant to Article 15 DSGVO to [REDACTED]. [REDACTED] replied on 14.08.2019, claiming that they had no longer stored any data on him and were therefore unable to comply with his request for information (Annex 7). No further communication was exchanged.

## **2.2. Correspondence with CRIF**

15. As mentioned above (see point 8), the complainant sent a request for information under Article 15 of the DSGVO by e-mail ([beauskunftungAT@crif.com](mailto:beauskunftungAT@crif.com)) to CRIF on 30 July 2019. In the request for information, the complainant asked for a copy of his personal data under Article 15(3) DSGVO and for all information under Article 15(1) DSGVO. On 31.07.2019, CRIF replied to the request for further information by claiming that no personal data concerning the complainant were stored in its system (Annex 4).
16. On the same day, the complainant asked how CRIF could attribute a "medium" credit rating to him, although they claimed not to have any data on him (Annex 8).
17. On 2 August 2019, CRIF merely repeated that no data concerning the complainant were stored in its database. CRIF also stated that an assessment of the complainant's creditworthiness/creditworthiness had not been carried out by CRIF and that the decision on the establishment of a business relationship or its framework conditions was exclusively taken by CRIF's client (Annex 9, page 1)
18. On the same day, the complainant again asked by e-mail how CRIF could certify him as having "medium" (yellow) creditworthiness if they did not have any personal data concerning him. He also asked whether CRIF per se issued a "medium" (yellow) credit rating when they did not have any personal data on him. The complainant attached the screenshot to this e-mail (Annex 9, pages 1 and 2).

19. On 5 August 2019, CRIF stated that [REDACTED] had tried to check the complainant's data on its system but had not received any result, since CRIF had not stored any data on the complainant. According to CRIF, if a person is not in its database, this person is assigned the result "yellow" and the decision [on whether or not to conclude a contract with this person] is left to CRIF's customer. CRIF further explained that, since they "do not know" the complainant, they could not return answers such as "green" (for "everything OK") or "red" (for "ATTENTION! Payment problems") to their customers (Appendix 10, pages 2 and 3).
20. On 12 August 2019, the complainant replied and asked how exactly CRIF had arrived at the value 446 and whether this was the standard scoring value when CRIF did not have data on anyone (Annex 10, page 2).
21. On 19.08.2019, CRIF replied that no further information could be provided under Article 15 of the DSGVO because it was a business secret (Annex 10, page 1):

*"On the basis of which parameters the transmitted credit rating value is calculated in detail and which algorithm in the background evaluates and links the data available on your person logically and mathematically is to be qualified as a trade secret. According to Art 15 Paragraph 4 DSGVO and § 4 Paragraph 6 DSG, the right to information under data protection law does not extend to information that constitutes a business or trade secret. "*

CRIF did not explain how the specific credit score of 446 was arrived at. Even the data protection declaration linked in the information (Appendix 4) with status 07.05.2019 (Appendix 11) does not provide any explanation for this.

22. On the same day, the complainant informed the Commission that he did not agree with CRIF's position and that it appeared to him that CRIF had calculated a score for him without having any data on him (Annex 10, page 1).
23. On 20 August 2019, CRIF replied by referring to its e-mail of 19 August 2019 without further addressing the complainant's concerns (Annex 12). No further communication was exchanged.



### 3. GROUNDS OF APPEAL

#### 3.1. Infringement of rights

24. Without prejudice to the complainant's right to make further submissions on additional grounds for complaint, subject to the power of the Data Protection Authority to conduct investigations beyond the specific grounds set out herein, and in accordance with Section 24(2) of the DSG, the complainant alleges infringement of the following provisions:

- The **right of information** (Article 15 DSGVO in conjunction with Article 12 DSGVO and interpreted in the light of recital 63 DSGVO and Article 8(2) GRC): CRIF's reply to the complainant's request for information of 30 July 2019 was incomplete and did not comply with the requirements of Articles 12 and 15 DSPO.
- The **principle of data accuracy** (Article 5(1)(d) DPA): The personal data that CRIF has created (possibly from nothing) about the complainant and transmitted to [REDACTED] (and possibly other CRIF customers) is incorrect. In addition, CRIF has not taken reasonable steps to refrain from further creating incorrect data about the complainant and transmitting it to CRIF's clients.
- The **transparency principle and the principle of fairness** (Article 5(1)(a) DPA): In the absence of information pursuant to Article 14 DSPO or incomplete information pursuant to Article 15 DSPO, the nature and extent of the processing operations carried out by CRIF are still unclear to the complainant. The credit assessment by CRIF, which led to negative consequences for him, was completely unexpected for the complainant, since he has de facto an excellent credit rating.

#### 3.2. Failure to make a complete copy of the data - Infringement of Article 15(3) of the DSGVO

##### 3.2.1. Data processing at the latest upon request by [REDACTED]

25. CRIF has repeatedly stated that it did not keep any personal data concerning the complainant in its systems - the complainant was a person unknown to CRIF (Appendices 4, 9 and 10). Nevertheless, CRIF has not simply responded to [REDACTED] request with a statement such as "Person not found in database" or "Person unknown", but has sent a result to [REDACTED] which undoubtedly contains personal data on the complainant. As can be seen from the screenshot, this result contains information such as

- a yellow "traffic light colour" (and yellow "partial results");
- a score of 446 points;
- the hit type "house hit";
- a kind of "distribution curve" that ranges from 250 to 700 "score points".

26. Even if CRIF should indeed not have stored any personal data on the complainant at the time of the credit rating enquiry by [REDACTED] such data were generated and transmitted to [REDACTED] at this point in time at the latest by processing the enquiry data [REDACTED] (see screenshot under "Selected").

### 3.2.2. Storage obligation according to § 152(2) GewO

27. At the latest from the time of [REDACTED] request, CRIF will thus process personal data of the complainant. As a credit information agency, CRIF is also obliged, pursuant to § 152(2) of the Trade Regulation Act 1994 (GewO), to "keep business correspondence and the accounts for seven years [...]" It can therefore be assumed that CRIF has continued to store the data transmitted to [REDACTED] in the form in which they are shown in the screenshot, at least in accordance with § 152(2) GewO. This assumption is also supported by the fact that the screenshot shows an "Archive ID" [REDACTED] and an "Archived checks" tab - CRIF apparently keeps an archive in which credit rating reports sent are stored. If other companies have already carried out creditworthiness enquiries about the complainant before [REDACTED] archive entries for these companies would also have to be available in a form similar to the results transmitted to [REDACTED]
28. The statement that CRIF did not keep personal data concerning the complainant would therefore only be true if CRIF deleted the data transmitted to its clients immediately after transmission. In this case, however, CRIF would violate its obligation to retain data under Section 152(2) of the Code of Commercial Law and would commit an administrative offence under Section 367 no. 39 of the Code of Commercial Law. In this context, reference is also made to the BVwG ruling of 09.12.2019, W214 2221970-1, in which the existence of an obligation to provide information regarding data stored in accordance with § 152(2) GewO was affirmed.

### 3.2.3. Intentional breach of Article 15 DSGVO

29. It should again be pointed out that the complainant did not receive the screenshot from CRIF but from [REDACTED] In contrast to Articles 13(4) and 14(5)(a) DSGVO, Article 15 DSGVO does not provide for an exception in the event that a data subject already has certain data or information - the violation of Article 15 DSGVO thus still continues at the time of filing this complaint (almost a year later!).
30. Finally, it should be noted that CRIF itself states in its e-mail of 19 August 2019 (Annex 10, page 1) that an "algorithm evaluates and links the [...] existing data logically and mathematically [...]". "Since CRIF speaks of "existing data", the complainant is convinced that CRIF deliberately did not obtain information on all existing personal data, but refused, by an incomprehensible reference to an alleged business secret, to transfer the copy of the data pursuant to Article 15(3) DPA.



31. CRIF should therefore have provided the complainant with at least a copy of all the data generated on the basis of the request data in the course of a credit check by a CRIF customer, transmitted to the customer and subsequently stored in accordance with Section 152(2) of the Trade Regulation. CRIF has not complied with this obligation to provide information, but has knowingly provided the complainant with false information and tried to dissuade him by referring to an alleged business secret. CRIF thereby deliberately violated Article 15(3) DSGVO.

### 3.3. Infringement of Article 15(1) DSGVO

#### 3.3.1. Article 15(1) DSGVO completely disregarded

32. With regard to

- the data generated by a CRIF customer on the basis of a creditworthiness inquiry by a CRIF customer using the inquiry data, transmitted to the customer and subsequently stored in accordance with § 152(2) GewO, and
- any other stored data

CRIF also failed to provide the complainant with information pursuant to Article 15(1) of the DPA. The fact that in the negative information provided to the complainant ("*no personal data stored*"; Appendix 4) CRIF linked its then data protection statement (Appendix 11) does not change this. A reference to a privacy statement can generally never replace the provision of information under Article 15(1) DPA, since Articles 13 and 14 DPA and Article 15 DPA concern different situations. Moreover, the information provided in Annex 11 seems in any case to refer only to the case where CRIF has indeed stored personal information relating to a data subject. It does not explain the currently possible case that a credit rating is calculated only on the basis of request data.

33. CRIF therefore also intentionally infringed the complainant's rights under Article 15(1)(a) to (h) of the DSGVO, the infringement of Article 15(1)(c) and (h) DSGVO being particularly flagrant:

#### 3.3.2. Missing information on data recipients

34. In particular, CRIF has failed to provide the defendant with information pursuant to Article 15(1)(c) of the DSGVO. CRIF is obliged under this provision,

- identify all those specific recipients to whom personal data of the complainant have been disclosed - i.e. to whom credit reports such as the one shown in the screenshot have been transmitted; and
- to disclose which specific personal data have been transmitted to the respective specific recipients.

If there were already queries in the CRIF database prior to the query by [REDACTED] on 30.07.2019, the recipients of the transmitted creditworthiness reports and the creditworthiness reports themselves must therefore be informed in any case. In this context, reference is also made to the finding W214 2221970-1.



### 3.3.3. Lack of information for automated decision making

35. CRIF's infringement of Article 15(1)(h) of the DSGVO should also be highlighted: CRIF has apparently calculated a credit rating score of 446 points for the complainant at least from the inquiry data (as well as from any data which may well be available at the time of the inquiry by [REDACTED] and assigned him a yellow "traffic light colour". According to general life experience and since CRIF itself speaks of an *"algorithm in the background"* (Appendix 10, page 1), it can be assumed that this was done by means of purely automatic processing.
36. The credit rating report prepared for [REDACTED] is therefore to be qualified as a decision within the meaning of Article 22(1) DSGVO which is based exclusively on automated processing - including profiling. A legal effect or considerable impairment of the complainant is, moreover, evident - based on the "too low" score of 446 points, the complainant was refused the conclusion of a contract with the CRIF customer [REDACTED]. The fact that [REDACTED] itself states in Annex 3 that *"a score of 650 points is required for successful delivery by [REDACTED]"* clearly shows that the decision to refuse the conclusion of the contract was de facto outsourced to CRIF and taken by CRIF. The fact that CRIF states otherwise in its then current privacy policy (Appendix 11) does not change this.
37. In any event, CRIF has failed to provide the complainant with meaningful information on the logic involved and the scope and intended effects of the processing "Credit rating for [REDACTED] pursuant to Article 15(1)(h) DPA. Instead, in a letter of 19.08.2019 (Annex 10, page 1), CRIF made a blanket allegation to the complainant that Article 15(4) DSGVO and § 4 (6) DSG precluded the provision of information and refused to provide further information.
38. According to the *guidelines* issued by the Article 29 Working Party on automated case-by-case decisions including profiling for the purposes of Regulation 2016/679, WP251rev.01 as amended on 06.02.2018, page 27 et seq. "On page 28 of WP251rev.01, the credit rating is even mentioned as an exemplary situation in which a comprehensible explanation by the person responsible is indispensable. Page 30 of WP251rev.01 states that a responsible person *"should provide the data subject with general information (particularly on factors taken into account in the decision and their "weighting" at an aggregated level) that is also useful for challenging the decision by the data subject."*
39. CRIF is therefore obliged to provide the complainant with the following information in particular:
- which concrete personal data were used to determine the credit score of 446;
  - how these data are weighted in each case, i.e. what influence they had on the decision transmitted to [REDACTED] (see screenshot)
  - which concrete data (such as socio-demographic information) were included in the determination of the credit score of 446 before linking non-personal data (such as socio-demographic information)



- whether, and if so, how previous queries by other CRIF clients and the resulting data stored in accordance with Section 152(2) of the Code of Commercial Law can or have influenced the result;
  - what is meant by the hit type "house hit";
  - the meaning of the "distribution curve" at the bottom right of the screenshot;
  - to what extent the "traffic light colour" output corresponds to the score of 446 points.
- This information must be of such granularity and comprehensibility that the complainant is in particular able to understand,
- why he was assigned a credit score of exactly 446 points and the "traffic light colour" yellow;
  - what consequences this score and this traffic light color usually have;
  - under which circumstances it is possible that the complainant is assigned a higher credit rating score, or the "traffic light colour" green, or
  - what actions, if any, the complainant could take himself to achieve this.

### **3.4. breach of the principle of data accuracy**

#### *3.4.1. Generation of incorrect data: Allocation of a "medium" credit rating despite the complainant's excellent creditworthiness*

40. There is no doubt that the data shown in the screenshot and transmitted to [REDACTED] are personal data pursuant to Article 4(1) DSGVO concerning the complainant.
41. Although CRIF has denied on several occasions that it has made any credit assessment of the complainant at all (Appendix 9, page 1 and Appendix 10, page 3), CRIF has in any event generated the personal data shown in the screenshot by means of certain automated processing operations and subsequently transmitted them to [REDACTED] (and subsequently, in all likelihood, stored them in accordance with § 152(2) GewO).
42. CRIF has thereby created data that is incorrect in content and does not correspond to the reality of life. According to CRIF's information, a yellow "traffic light colour" means an "intermediate level" between good creditworthiness ("everything OK") and bad creditworthiness ("ATTENTION! Payment problems") (Appendix 10, page 3). The complainant was thus assigned a merely "medium" credit rating. If one attempts to interpret the "distribution curve" in the bottom right-hand corner of the screenshot, one arrives at the conclusion that the complainant thus belongs to the worst third of the persons recorded in this "distribution curve".
43. In fact, the complainant has excellent creditworthiness: he has never been in financial difficulties in the past, is debt-free, has a fixed salary and is entitled to several rights (enclosures 13 to 15). There are no indications of a merely "medium" creditworthiness. In any event, the fact that CRIF may indeed "not know" the complainant (Appendix 10, pages 2 and 3) is not a date that justifies a reduced credit rating. The data generated by CRIF and transmitted to [REDACTED] are therefore incorrect in terms of content.



### 3.4.2. Systematically DSGVO-violating data processing by CRIF

44. In the absence of information from CRIF, it remains unclear to the complainant as to how CRIF was ultimately able to obtain these incorrect data. Depending on the design of the "*algorithm in the background*" used by CRIF and on the actual "data situation" in CRIF's systems, the following scenarios are conceivable for the complainant:

44.1. **Scenario A: CRIF creates new, incorrect personal data from scratch:**

If no personal data on the complainant was actually available in the CRIF database before [REDACTED] made its query and if the statement that CRIF has never made a credit rating on the complainant (Appendix 9, page 1 and Appendix 10, page 3) is correct, the data shown in the screenshot must be freely invented information. It is not necessary to further explain that the processing of such "fictional data" infringes Article 5(1)(d) DPA.

44.2. **Scenario B: CRIF generates new, inaccurate personal data based on fundamentally correct request data:**

The data shown in the screenshot could also have been generated because the query data sent by [REDACTED] was *evaluated and linked* by an "*algorithm in the background [...] logically and mathematically [...]*", as CRIF puts it (Appendix 10, page 1). In this case, the data shown in the screenshot are the result of a calculation logic which is contrary to the provisions of Articles 5(1)(d), 24 and 25 of the DPA: CRIF has generated incorrect personal data on the basis of completely neutral information (name, date of birth and address), thereby creating information which is detrimental to the complainant in business life. The credit rating score of 446 and the yellow "traffic light" colour are likely to cause the complainant massive harm - as was actually the case when he refused to conclude an energy supply contract with [REDACTED]

44.3. **Scenario C: CRIF generates new, inaccurate personal data by linking it to existing socio-demographic information:**

As just mentioned, CRIF also speaks of a "*linking*" of data in Appendix 10, page 1. This could mean that CRIF has linked the personal request data with non-personal socio-demographic information (such as statistics on the house, street, postcode, comparable people of similar age, etc.). Such practices are known from credit reporting agencies - also outside Austria. It is quite conceivable, for example, that a man in his early 30s who lives in [REDACTED] Vienna or a person living in [REDACTED] has an average credit rating of only 446 in CRIF's systems. However, if CRIF has assigned such statistical values to the complainant without checking them, incorrect personal data have been generated as a result, since the complainant - as explained above - in reality has an excellent credit rating.

44.4. **Scenario D: CRIF creates new, incorrect data based on existing incorrect personal data that has not been informed:**

The fourth possibility is that CRIF has other personal data relating to the complainant, but knowingly concealed them when replying to the request for information. If these personal data are erroneous because they indicate only "medium" creditworthiness or if they are



processed using faulty logic, they may have led to the low credit score and the yellow "traffic light" colour.

45. Since it is unclear which of these scenarios is applicable or whether the incorrect data were generated in a completely different way, a closer examination of the relevant processing operations under Article 58 (1)(b), (e) and (f) FADP is essential.
46. CRIF is obliged under Articles 24, 25 and 35ff of the DPA to design its processing operations in such a way that the principle of data accuracy is inherent in them, in accordance with Article 5(1)(d) DPA. A credit assessment in the form of a credit score and a "traffic light colour" should only be the result of the processing of existing data which may actually have a negative influence on the probability of payment defaults (such as collection claims or insolvencies). CRIF itself mentions in its privacy policy (Appendix 11), under point C, for example "[...] *insolvency data and data on judicial auctions, payment experience data on compliance with payment targets and payment experience data on undisputed claims that are unpaid after the due date and have multiple urgencies, balance of unpaid claims due*; ". Such data are not available for the complainant, who is always debt-free and well-off.
47. Accordingly, if the CRIF's systems did indeed not contain any personal data on the complainant at the time of the [REDACTED] query (30.07.2019), a result as shown in the screenshot should never have arisen. In such a case, personal data such as the credit rating score of 446 or the yellow "traffic light colour" are inevitably incorrect. **A correct result in response to a query from [REDACTED] would have had to be "Person not found in database", "Person unknown", "Query not possible", "No data available" or similar.**

#### 3.4.3. No corrective action proven

48. The complainant has on several occasions explicitly asked why CRIF assigned him a "medium" credit rating or a score of exactly 446 points (Appendix 8, page 1, Appendix 9, page 1 and Appendix 10, pages 1 and 2). CRIF has obviously not taken these questions as an opportunity to verify the correctness of the data transmitted to [REDACTED] - and any data stored in its systems. Rather, CRIF has tried to make the complainant believe that no credit assessment was carried out at all (Appendix 9, page 1 and Appendix 10, page 3) and then refused further communication on the grounds of an alleged business secret (Appendix 10, page 1).
49. The complainant therefore assumes that CRIF continues to use the same calculation logic ("*algorithm in the background*") and would again assign the complainant an incorrect "medium" credit rating and a yellow "traffic light" if it wanted to conclude a contract with [REDACTED] or another CRIF customer which requires a positive credit rating. CRIF has therefore not taken any measures to prevent further systematic violations of the principle of data accuracy. CRIF has to prove otherwise in accordance with Articles 5(2), 24 and 25 DSGVO.

### 3.5. breach of the principle of transparency and the principle of processing in good faith



50. According to Article 5(1)(a) of the DPA, personal data must be processed lawfully, fairly and in a way that is comprehensible to the data subject. Recital 39 FDPIC underlines this: *"Any processing of personal data should be lawful and fair. Natural persons should have transparency as to the collection, use, access or other processing of personal data concerning them and as to the extent to which personal data are processed and will be processed in the future. [...]"*.
51. The complainant was not even aware of the existence of CRIF until [REDACTED] rejection of his application to conclude an energy supply contract. Let alone was he aware that CRIF processes personal data relating to his person or that personal data (as can be seen in the screenshot) relating to his person are generated in the event of inquiries by CRIF customers.
52. As explained above, the respondent has an excellent credit rating. He has a stable income, no outstanding loans and is and has always been able and willing to pay his debts on time. The fact that he was subjected to a credit assessment, the result of which (score of 446 and yellow "traffic light" colour) had a blatantly negative impact on him (refusal to conclude a contract by [REDACTED] came completely unexpected for him. Rather, the complainant could reasonably expect that a credit agency would give a positive result (in the sense of a "black list", as there are no negative entries) or even no result at all in the case of a credit check.
53. In addition, the complainant was not informed by CRIF in accordance with Article 14 of the DSGVO, although CRIF had collected personal data on him at the latest when [REDACTED] carried out its enquiry on 30.07.2019 and then stored them in accordance with § 152(2) of the GewO. The complainant's request for information was also unsuccessful. As explained under point 2.2., CRIF always claimed not to have stored any personal data concerning the complainant (Annex 4) and subsequently refused to provide information pursuant to Article 15(1) and (3) of the Code of Commercial Law with a vague reference to a "business secret" (Annex 10, page 1).
54. The complainant has thereby gained the impression that CRIF deliberately works in a non-transparent manner and tries to hide the processing of his personal data from him - possibly in order to make it impossible or difficult for him to continue to exercise his rights under Articles 16 to 22 DPA.
55. Not least in combination with CRIF's structural disregard for the principle of data accuracy (see point 3.4.), **the processing of personal data carried out by CRIF violates the principle of transparency and the principle of fairness as laid down in Article 5(1)(a) of the DPA.**

## 4. APPLICATIONS

### 1) request for investigation



The complainant invites the DPOs, in accordance with the powers conferred upon them by Article 58(1) of the DPA, to fully investigate this complaint, in particular with a view to clarifying the following elements of the facts:

- (i) Did CRIF already process personal data on the complainant before [REDACTED] query on 30.07.2019? If so, which data are involved?
- (ii) Were there any credit queries in the CRIF database by other CRIF clients before or after 30/07/2019 which involved personal data concerning the complainant? If so, who were the recipients of these data transfers (Article 15(1)(c) DPA), what request data were transmitted to CRIF and what results were transmitted to these recipients?
- (iii) Does CRIF keep records pursuant to Section 152(2) of the Code of Commercial Law which contain personal data about the complainant? If so, what information is included in these records?
- (iv) How is the calculation logic used by CRIF designed, which generated the result shown in the screenshot (especially credit score of 446 points and yellow "traffic light" color)? In particular, the DSB should
  - explore the answers to the questions raised in paragraph 39 of this complaint; and
  - find out whether one of the scenarios described in paragraphs 44.1. to 44.4. of this complaint applies.

The complainant suggests that the DPO should investigate these elements of the facts, in particular by inspecting data processing operations on the premises of CRIF in accordance with Article 58(1)(a), (b), (e) and (f) of the DPA in conjunction with Article 22(1) and (2) of the DPA and Article 54 of the AVG.

Finally, the complainant requests that the results of this investigation be made available to him in the context of this procedure pursuant to Article 77(2) of the DSGVO.

## **2) Request to order CRIF to comply with the complainant's request for information**

The DPO may decide by decision as follows:

- (i) Pursuant to Article 15(3) of the DPA, CRIF is obliged to provide the complainant with a copy of all personal data relating to him which are processed. This includes any data stored in accordance with Section 152(2) of the Code of Commercial Law;
- (ii) Pursuant to Article 15(1)(c) of the DPA, CRIF is obliged to provide the complainant with information, if known, to all recipients (including processors) of the complainant's personal data that are the subject of the processing. In all other cases, the respondent is obliged to provide the complainant with information at least on categories of recipients.

In the case of known recipients, CRIF shall be obliged to disclose which specific personal data have been transferred to each specific recipient.

- (iii) Pursuant to Article 15(1)(h) DPA, CRIF is obliged to provide the complainant with meaningful information on the logic involved in the processing of his personal data and the scope and intended effects of such processing on the complainant. Pursuant to Article 12(1) DPA, this must be done in a precise, transparent, comprehensible and easily accessible form in clear and simple language.

### **3) Application for a declaration of infringement**

The DPO may decide by decision as follows:

- (i) CRIF has infringed Article 5(1)(a) of the DPA by processing the complainant's personal data in violation of the provisions of Article 5(1)(a) of the DPA.
- (ii) CRIF has infringed Article 5(1)(d) of the DPA by processing the complainant's personal data in violation of the provisions of Article 5(1)(d) of the DPA.

### **4) Request for the imposition of a processing ban**

The DPO may, depending on the outcome of the investigation, prohibit CRIF by decision pursuant to Article 58(2)(f) of the DPA

- (i) to generate out of nothing personal data for the credit rating of a data subject (such as in particular credit score or "traffic light colour", as shown in the screenshot) and to transmit them to recipients, or
- (ii) to generate and transmit to recipients, solely on the basis of the information provided by a CRIF customer in the course of a credit assessment, personal data relating to the creditworthiness of a data subject (such as, in particular, credit score or "traffic light colour", as shown in the screenshot); or
- (iii) to generate personal data for the creditworthiness assessment of a data subject (such as, in particular, credit score or "traffic light colour", as shown in the screenshot) and to transmit this data to recipients solely by linking it to socio-demographic information.

### **5) Call for the imposition of effective, proportionate and dissuasive financial penalties**

Finally, the complainant suggests that an effective, proportionate and dissuasive fine be imposed on CRIF pursuant to Article 58(2)(i) in conjunction with Article 83(5)(a) and (b) DSGVO, taking into account that



- (i) the complainant is in all likelihood only one of possibly hundreds of thousands of persons concerned for whom CRIF generates and transmits personal creditworthiness data (such as credit score and "traffic light colour") to their customers despite the lack of (meaningful) information (Art 83(2)(a) DPA);
- (ii) CRIF, contrary to Articles 24 and 25 DPA, carries out automated processing operations which categorically violate the principles of transparency, processing in good faith and data accuracy, at least for data subjects for whom no personal data are allegedly stored up to the time of consultation; (Art 83(2)(a) and (d) DPA and;
- (iii) CRIF deliberately refused to provide information under Article 15(1) and (3) of the DPA on the basis of an alleged business secret (Art 83(2)(b) DPA).

## **5. MISCELLANEOUS**

We are always happy to help with any queries of a factual or legal nature that you may need in order to process this complaint. Please contact us at [REDACTED]

Vienna, 31.07.2020