



noyb - European Centre for Digital Rights
Goldschlagstrasse 172/4/3/2
1140 Vienna
AUSTRIA

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

[REDACTED]

brought in by

[REDACTED] (hereinafter referred to as "the complainant").

represented by

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

against

- 1) CRIF GmbH, Rothschildplatz 3/Top 3.06.B, Vienna, (hereinafter "CRIF") and
- 2) AZ Direct Österreich GmbH, Donau-City-Strasse 6. Andromeda Tower 1220 Vienna (hereinafter "AZ Direct")

CRIF and AZ Direct are jointly referred to as the "Respondents".

1. REPRESENTATION

1. noyb is a non-profit organisation active in the field of data protection (Articles of Association, [Annex 1](#)). The complainant has mandated noyb to represent him pursuant to Article 80(1) of the GDPR ([Annex 2](#)).
2. Communication between noyb and the data protection authority in the context of this procedure may be made by e-mail to [REDACTED] with reference to the case number mentioned in the title of this complaint.

2. CONTENT

3. By e-mail of 11.01.2021 (Annex 3), the complainant sent a request for information under Article 15 of the GDPR to CRIF and other credit reference agencies operating in Austria. In this request for information, which also included a copy of his passport, the complainant asked various questions about CRIF's data processing. In particular, the complainant asked about any changes of purpose and whether or when he had been informed of any data collection.
4. CRIF replied to this request for information by e-mail dated 12.02.2021 (Enclosure 4). The actual information can be found in the attachment to this e-mail and is entitled "Auskunft_Vorabversion DPO CRIF" (Enclosure 5; password: "21.03.1993" without inverted commas). In this document, there is also a link to the "Privacy Statement Credit Agency and Address Publisher" on CRIF's website (www.crif.at/konsumenten/datenschutzerklaerung-auskunftei-und-adressverlag; download of 15.03.2021, Enclosure 6). CRIF did not respond separately to the complainant's individual questions.
5. As can be seen in Annex 5, CRIF processes several personal data of the complainant, namely name and date of birth, as well as (partly historical) addresses. In addition, it can be seen that CRIF has passed on these data together with various score values to its customers as a result of creditworthiness queries (see "RECIPIENTS AND RECIPIENT CATEGORIES"). Only "arvato-AZ Direct GmbH" is listed as the source of the data (see "NAMES AND ADDRESSES").
6. The complainant understands that "arvato-AZ Direct GmbH" can only mean AZ Direct Österreich GmbH, Donau-City-Straße 6, 1220 Vienna (hereinafter "AZ Direct"). According to the Gewerbeinformationssystem Austria, AZ Direct has a valid business licence as an ¹address publisher pursuant to § 151 GewO (Annex 7).
7. According to Gewerbeinformationssystem Austria, CRIF has a trade licence both as a credit reference agency pursuant to § 152 GewO and as an address publisher pursuant to § 151 GewO (Annex 8).
8. The complainant has no business relationship with CRIF or AZ Direct. He has never provided any of these companies with data himself. He first learned that CRIF and AZ Direct had collected and processed his personal data on the basis of his request for information. The complainant never received any information about the collection of data pursuant to Article 14(1) and (2) of the GDPR. Nor was he informed by CRIF or AZ Direct of any changes of purpose after collection, in accordance with Article 14(3) of the GDPR. The complainant's question in this regard in his request for information to CRIF (Annex 3) remained unanswered.
9. By e-mail of 22.02.2021 (Exhibit 9), the complainant requested CRIF to restrict processing pursuant to Article 18(1)(b) of the GDPR, based on the violation of Article 5(1)(b), Article 6(1)(f) of the GDPR and Section 1 of the GDPR. By e-mail of 01.03.2021 (Exhibit 10), CRIF replied with an obvious standard text, which, however, did not refer to the restriction of processing, but to a request for erasure, although the complainant had expressly clarified in Exhibit 9 that he rejected erasure at the moment.

¹ If the term "address publisher" is used in the following, this always refers to the business of "address publishers and direct marketing companies" pursuant to § 151 GewO.

10. In an e-mail of 01.03.2021 (Enclosure 11), the complainant therefore once again stated that he was not demanding the deletion of data, but the restriction of processing, to which CRIF had not yet responded at the time this complaint was lodged.

3. GROUNDS FOR APPEAL

3.1. Violated rights

11. Without prejudice to the right of the complainant to make further submissions on additional grounds of complaint, subject to the power of the data protection authority to investigate beyond the specific grounds set out herein, and in accordance with Section 24(2) DPA, the complainant alleges the following breaches of law:

- **Principle of purpose limitation** pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR:

Injuries caused by AZ Direct:

- AZ Direct collected the complainant's data for the purpose of "*exercising the trade of address publisher pursuant to § 151 GewO*" and supposedly transmitted them to CRIF for this purpose. However, this was done in the knowledge that CRIF would process these data for the purpose of "*carrying on the business of credit reference agency pursuant to Section 152 of the GewO*", a purpose which is incompatible with the original purpose on the part of the data supplier AZ Direct pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR,

or

- AZ Direct collected the complainant's data for the purpose of "*exercising the trade of address publisher pursuant to Section 151 of the Trade Regulation Act*", but later transferred it for the purpose of "*exercising the trade of credit agency on credit relationships pursuant to Section 152 of the Trade Regulation Act by the data recipient CRIF*", a purpose that is incompatible with the original purpose on the part of the data provider AZ Direct pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR.

Violations by CRIF:

- CRIF maintains a completely mixed-purpose database in which the data are not kept separately according to the purposes of "*exercising the trade of credit agency on credit relationships pursuant to § 152 GewO*" and "*exercising the trade of address publisher pursuant to § 151 GewO*" and are processed unfiltered for both purposes.
- Either CRIF originally collected the complainant's data for the purpose of "*carrying on the business of publishing addresses pursuant to Section 151 of the Trade Regulation Act*", but then further processed them for the purpose of "*carrying on the business of providing credit information pursuant to Section 152 of the Trade Regulation Act*", although these purposes

are completely incompatible pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR,

- or CRIF has already originally collected the data for the purpose of "*exercising the trade of credit agency on credit relationships pursuant to Section 152 GewO*", a purpose which is incompatible with the original purpose on the part of the data provider AZ Direct pursuant to Article 5(1)(b) in conjunction with Article 6(4) DSGVO.
- **Lawfulness of the data processing** pursuant to Article 6(1) DSGVO:

Injuries caused by AZ Direct:

- AZ Direct cannot base the (further) processing of the complainant's personal data in the form of the transfer to CRIF on any justification pursuant to Article 6(1) of the GDPR. In particular, there are no legitimate interests of AZ Direct or third parties within the meaning of Article 6(1)(f) of the GDPR, or these are clearly outweighed by the interests and fundamental rights of the complainant.

Injuries caused by AZ CRIF:

- CRIF cannot base the collection and (further) processing of the complainant's personal data on any justification pursuant to Article 6(1) of the GDPR. In particular, there are no legitimate interests of CRIF or third parties within the meaning of Article 6(1)(f) of the GDPR, or these are clearly outweighed by the interests and fundamental rights of the complainant.

3.2. Address publishers as CRIF's main data sources for credit assessment purposes

3.2.1. Systematic data collection from address publishers such as AZ Direct as part of CRIF's business model

12. CRIF indicates in Exhibit 5 the address publisher AZ Direct as the sole source of the complainant's personal data (see paragraphs 5 and 6). Since, according to Section 151 of the GewO, an address publisher processes personal data exclusively for direct marketing purposes of third parties, the transfer by AZ Direct should actually have been made (i) for direct marketing purposes of CRIF or (ii) for direct marketing purposes of third parties (i.e. of AZ Direct and CRIF of different companies).
13. As a result, CRIF should actually also have collected the complainant's personal data only (i) for its own direct marketing purposes or (ii) for the direct marketing purposes of third parties. Since CRIF's offer as a credit information agency is directed throughout at other companies ("business-to-business"), it is completely unrealistic to assume that CRIF collected the data in order to send the complainant advertising material about CRIF (the complainant did not receive such advertising material either). But it can also be proved that the data were not passed on for advertising purposes of third parties (=customers of CRIF): As can be seen from Exhibit 5, CRIF has always passed on the complainant's data in connection with numerical creditworthiness scores.

14. The processing was therefore obviously carried out in any case for the purpose of assessing the complainant's creditworthiness within the meaning of § 152 GewO - and not for the purpose of "exercising the trade of address publisher pursuant to § 151 GewO".
15. The complainant's situation is not an isolated case. According to point 2 of CRIF's data protection statement (Exhibit 6), CRIF generally collects data from address publishers pursuant to Section 151 of the GewO. CRIF also states the following on its website (<https://www.crif.at/konsumenten/haeufig-gestellte-fragen/>, download of 15.03.2021, Enclosure 12):
- "We have only positive things to report on over 90% of all consumers - meaning that no payment experience data is stored!"*
16. Accordingly, "negative data sources" such as debt collection agencies, lawyers or the Edict file are ruled out for more than 90% of the consumers stored in the CRIF database. Company registers and trade registers are out of the question as sources for consumer data; the register of associations only contains data on a fraction of the Austrian population.
17. Therefore, unless CRIF receives master databases from its customers on a large scale or resells data from the ZMR contrary to § 16a(5a) MeldeG, the majority of the names, addresses and dates of birth of consumers stored by CRIF must inevitably have been collected from address publishers pursuant to § 151 GewO (such as AZ Direct). The following statements in this complaint therefore apply in any case to the complainant, but also to possibly millions of other Austrians.

3.2.2. Open questions

18. In this context, the specific purposes for which AZ Direct transmitted the complainant's personal data to CRIF and for which CRIF collected and subsequently (further) processed these data are unclear.
19. To determine this, the following data processing activities need to be examined:
- Transfer of personal data of the complainant (and other data subjects) from AZ Direct to CRIF (hereinafter "processing activity 1");
 - Collection of these data by CRIF, including entry into CRIF's database and consolidation with any existing data (hereinafter "processing activity 2");
 - Further processing of these data by CRIF, including transfers to CRIF's clients (hereinafter "processing activity 3").
20. As explained, AZ Direct is an address publisher pursuant to Section 151 of the Austrian Trade Regulation Act (see Annex 7). As such, AZ Direct is authorised to pass on data for the direct marketing purposes of third parties, but not to pass on data for the assessment of creditworthiness by a credit reference agency within the meaning of § 152 GewO. This means that

- Either CRIF indicated (knowingly incorrectly) to the address publisher AZ Direct that it intended to process collected data (such as that of the complainant) only for its own direct marketing purposes or for the direct marketing purposes of third parties and AZ Direct was entitled to rely in good faith on this indication (hereinafter "scenario 1"),
- or AZ Direct knows that CRIF is in fact collecting this data for the purpose of Section 152 GewO, or is processing it for this purpose immediately after collection. In this case, AZ Direct is involved in this unlawful procedure (from which both companies benefit) and colludes with CRIF in this respect (hereinafter "Scenario 2"),
- or AZ Direct should have known, based on all the circumstances, that CRIF was in fact collecting this data for the purpose of § 152 GewO or was processing it for this purpose immediately after collection. In this case, AZ Direct cannot assume and claim in good faith that it is only transmitting data for the purposes of Section 151 GewO (hereinafter "Scenario 3").

21. Which of these scenarios applies is decisive for the assessment of compliance with Articles 5 and 6 of the GDPR, but also for a possible assessment of a penalty pursuant to Article 83(2) of the GDPR. It seems highly unlikely that the first scenario applies: if CRIF were to actually use the data received exclusively as an address publisher, AZ Direct would be supplying a direct competitor with valuable data. Moreover, CRIF's website (see Exhibits 6 and 12) and CRIF's trade licence available in the Gewerbeinformationssystem Austria pursuant to Section 152 GewO (Exhibit 7) also leave no doubt as to the processing for credit assessment purposes, which would have had to be taken into account in the context of AZ Direct's due diligence.

22. CRIF and AZ Direct, as accountable controllers within the meaning of Article 5(2) in conjunction with Article 24 of the GDPR, are obliged to clarify

- who they consider to be the controller within the meaning of Article 4(7) of the GDPR for each of the processing activities referred to in paragraph 199 and whether there is joint responsibility or a processing relationship;
- the purposes for which they consider that the processing activities referred to in paragraph 199 are carried out;
- the legal basis pursuant to Article 6(1) of the GDPR on which it considers that the processing activities referred to in paragraph 199 are carried out; and
- which of the two cases outlined in paragraph 20 applies.

23. In order to clarify these issues, the complainant requests that CRIF and AZ Direct submit their processing records pursuant to Article 30 of the GDPR, the contract governing the data supplies by AZ Direct and any agreements pursuant to Article 26 and/or Article 28 of the GDPR (see request in point 4).

24. Depending on how these questions are ultimately answered, the data protection violations by AZ Direct and CRIF described in point 3.1 manifest themselves in different ways. However, as explained below, the systematic transfer of data by address publishers (such as AZ Direct) to CRIF and the systematic collection of data by CRIF from address publishers (such as AZ Direct) are in any case incompatible with the GDPR.

3.3. Violation of the purpose limitation principle

3.3.1. Breach due to data transfer from AZ Direct to CRIF (processing activity 1)

25. The following statements are based on the assumption that AZ Direct is the sole controller within the meaning of Article 4(7) of the GDPR for the transfer of personal data of the complainant (and other data subjects) from AZ Direct to CRIF (hereinafter "processing activity 1") and focus on data protection breaches by AZ Direct. If AZ Direct is jointly responsible with CRIF for this processing activity, the data breaches described will also concern CRIF.
26. Insofar as AZ Direct knew that CRIF was in fact collecting the data for the purpose of Section 152 of the GewO or was processing them for this purpose immediately after collection (Scenario 2) or should at least have known this (Scenario 3), AZ Direct cannot claim in good faith that the data are being transferred to CRIF solely for the purpose of processing by CRIF within the framework of Section 151 of the GewO. Rather, AZ Direct knew or should have known that CRIF was in fact collecting this data for the purpose of assessing creditworthiness within the meaning of Section 152 of the GewO or was processing it immediately after collection.
27. Accordingly, AZ Direct has used the personal data of the complainant to
- originally collected and stored for the purpose of exercising the address publisher's trade pursuant to Section 151 of the Trade Regulation Act, i.e. (i) for the purpose of forwarding them to a third party for the third party's direct marketing purposes or (ii) for the purpose of another address publisher processing them for the purposes of Section 151 of the Trade Regulation Act,
 - later, however, this data is transmitted to CRIF by the data recipient CRIF for credit assessment purposes within the meaning of Section 152.

This transfer to CRIF is therefore a further processing operation, as it was carried out for a purpose other than that for which AZ Direct originally collected the data. However, in accordance with Article 5(1)(b) in conjunction with Article 6(4) of the GDPR, this further processing purpose is completely incompatible with the purpose for which the data were collected:

28. There is no close link between the purposes (Article 6(4)(a) GDPR), quite the contrary:

- 28.1. Direct marketing by CRIF itself would be aimed at selling CRIF's products to the complainant, whereas processing under § 152 GewO is aimed at selling creditworthiness data about the complainant to CRIF's customers. CRIF's data protection statement (Annex 6) speaks in this connection of "*customers/partners of CRIF GmbH with a legitimate interest in the information provided in each case, in particular companies in the credit industry and in (Internet) commerce which provide advance services to data subjects (e.g. purchase on open account, granting of credit, credit card business, etc.), companies which are subject to statutory verification obligations and landlords*".

28.2. Direct marketing purposes of CRIF's clients are also unrelated to processing for the purpose of assessing the complainant's creditworthiness within the meaning of Article 6(4)(a) of the GDPR. Direct marketing is carried out in order to attract new customers or to advertise to existing customers. A credit check, on the other hand, is carried out in order to check a potential customer who already wants to contract with a company on his own initiative and to refuse him the desired business transaction if his creditworthiness is insufficient. To put it simply: direct marketing serves to attract customers, credit checks to reject certain customers.

29. The collection context (Article 6(4)(b) GDPR) also speaks against a compatibility of the purposes:

29.1. According to recital 50, sentence 6 of the GDPR, the reasonable expectations of a data subject must be taken into account in the purpose compatibility check: AZ Direct did not originally collect the complainant's data on the occasion of the complainant's conduct in breach of contract (non-payment of debts/enforcement by debt collection agency) or over-indebtedness (insolvency, judicial auction), but in the context of Section 151 of the German Trade Regulation Act (GewO). AZ Direct, as an address publisher, has nothing to do with credit rating, creditor protection, legal enforcement, debt collection or other "credit-related" activities. It is not clear to the complainant where AZ Direct got its data. He only learned that AZ Direct was processing his data when he received the information (Annex 5). The complainant could and should never have anticipated that AZ Direct - as an address publisher - would forward his data to a credit agency. The processing operations that are the subject of the complaint therefore came as a complete surprise to him. He could never reasonably have expected them.

29.2. This applies all the more since neither AZ Direct nor CRIF ever informed the complainant of any processing within the meaning of Articles 13 and 14 of the GDPR. AZ Direct already never informed the complainant about a possible or concrete transfer of data to the credit reference agency CRIF for a different purpose. CRIF also never informed the complainant of the collection at AZ Direct (Article 14(1) and (2) of the GDPR) or of a change of purpose (Article 14(3) of the GDPR) and also left the complainant's question in this regard in Annex 3 unanswered. In light of Recital 50, sentence 8, informing the data subject about the change of purpose pursuant to Article 13(3) or 14(4) of the GDPR is a condition for the permissibility of further processing.²:

"In any event, it should be ensured that the principles laid down in this Regulation are applied and, in particular, that the data subject is informed of these other purposes and of his or her rights, including the right to object. "

The lack of information about the change of purpose thus leads to the inadmissibility of data processing even for purposes that are compatible in themselves.

29.3. It should also be noted that AZ Direct does not have a trade licence pursuant to Section 152 of the Trade Regulation Act (see Annex 7). Data transfers by AZ Direct for credit

² See Feiler/Forgó, EU-DSGVO (2017), Article 6 DSGVO, para 16.

assessment purposes may therefore also result in a violation of trade law by AZ Direct, as the trade licence pursuant to section 151 GewO only permits the processing of personal data for marketing purposes of third parties. The violation of §§ 151 and 152 GewO carries a penalty of up to EUR 2,180 per violation pursuant to § 367 Z 39 GewO. Therefore, even if the complainant had known about the processing of his data by AZ Direct and had proactively checked AZ Direct's trade licence, he would never have thought that AZ Direct would forward his data to a credit reference agency. AZ Direct's trade licence, which is publicly available in the Gewerbeinformationssystem Austria, therefore rather creates the legal appearance that AZ Direct only processes data for third-party marketing purposes.

30. In accordance with Article 6(4)(b) of the GDPR, the relationship between the data subject and the controller must also be taken into account. As explained in recital 8, the complainant has no business relationship with AZ Direct (or CRIF) and has never provided AZ Direct (or CRIF) with any data himself. The fact that AZ Direct transmitted his data to CRIF for credit assessment purposes was done without his intervention and behind his back (see already point 29.2).
31. The possible consequences of further processing (Article 6(4)(d) of the GDPR) are hardly assessable for the complainant and may well be negative: Although AZ Direct (as far as can be seen) only has the complainant's name, date of birth and (partly historical) addresses and has transmitted these data to CRIF, CRIF - in a manner that is not comprehensible to the complainant - calculated various numerical creditworthiness scores and transmitted them to the recipients shown in Annex 5. It is quite possible that the complainant will suffer a disadvantage in future as a result of such processing, because a CRIF customer considers a transmitted creditworthiness score to be insufficient (for instance in order to enter into a legal transaction or to enable purchase on account). In addition, processing for creditworthiness assessment purposes is intrinsically intrusive - not least because it is carried out by means of profiling pursuant to Article 4(4) of the GDPR and also entails automated individual decisions pursuant to Article 22 of the GDPR (at the level of CRIF or at the level of CRIF's customers who rely on the creditworthiness scores received).
32. As a result, a data transfer of the complainant's personal data from the address publisher AZ Direct to CRIF for the purpose of CRIF's assessment of the complainant's creditworthiness violates Article 5(1)(b) in conjunction with Article 6(4) of the GDPR. This also applies in general to all other personal data transmitted to CRIF by an address publisher within the meaning of Section 151 GewO such as AZ Direct (see paragraph 15).
33. Only if AZ Direct had demonstrably been unaware in good faith of the processing by CRIF for the purpose of Section 152 GewO (i.e. scenario 1 outlined in paragraph 20 applies), AZ Direct has not violated the purpose limitation principle pursuant to Article 5(1)(b) GDPR. It is up to AZ Direct, as the accountable controller, to prove this.

3.3.2. Infringement due to data collection and (further) processing by CRIF (processing activities 2 and 3)

3.3.2.1. *Mixed-purpose database systematically violates the purpose limitation principle*

34. According to its own information, CRIF maintains a mixed-purpose database. According to point 1 of CRIF's privacy statement (Annex 6), data are processed for the following purposes, among others (emphasis added):

- *"Pursuit of the business of credit reference agency pursuant to section 152 Trade, Commerce and Industry Regulation Act 1994 and of address publishing pursuant to section 151 Trade, Commerce and Industry Regulation Act 1994;*
- *irrespective of the commercial law classification, the provision of information to customers for the purpose of identity determination, age verification, creditworthiness check, address determination, reliability check, risk management (in particular calculation of a future probability of non-payment), abuse prevention, fulfilment of customers' verification obligations (in particular with regard to combating money laundering, terrorism financing and corruption as well as with regard to consumer loans and player protection), tariff setting (e.g. tariff classification by the customer), conditioning (e.g. payment conditions offered by customers) and end customer support.e.g. tariff classification by the customer), conditioning (e.g. payment conditions offered by customers) and end customer support;"*

35. CRIF therefore makes no distinction as to whether a personal data is collected and (further) processed for the purposes of Section 151 GewO or for those of Section 152 GewO ("*irrespective of the trade law classification*"). Such an approach is incompatible with Article 5(1)(b) of the GDPR, other GDPR provisions and trade law on many levels and raises a multitude of questions/problems which the complainant asks the DPO to discuss:

- 35.1. Possible violation of trade law: Basically independent of the associated violations of the GDPR:- Vienna set out in recital 29.3AZ Direct may be in breach of Sections 151 and 152 of the GewO, which carries a penalty of up to EUR 2,180 per breach under Section 367(39) of the GewO. In millions of cases (see paragraph 15), CRIF may be the designated or participating offender for these administrative offences possibly committed by AZ Direct.
- 35.2. "Robinson list" and objections to direct marketing: How does CRIF deal with unconditional objections to direct marketing pursuant to Article 21(2) of the GDPR, entries in the list pursuant to Section 7(2) of the E-Commerce Act and, in particular, entries in the "Robinson list" pursuant to Section 151(9) of the Trade Regulation Act with regard to data collected exclusively from an address publisher such as AZ Direct? Specifically, Section 151(9) of the GDPR provides that traders within the meaning of Section 151(1) of the GewO - i.e. also CRIF (Annex 8) - may not send or distribute addressed advertising material to the persons entered in this list and may also not broker their data. The data contained in the list may only be used for the purpose of preventing the sending of advertising material. Consequently, an entry in the "Robinson list" must have the consequence that CRIF will also no longer process the data of the person concerned for credit assessment purposes and will also not "broker" these data to third parties. If CRIF does not comply with this provision, it will be liable to a fine of up to EUR 2,180.00 for each infringement under § 367 Z 39 GewO.

- 35.3. Deletion as a result of unconditional objection to direct marketing: Does CRIF still store data on data subjects who have requested deletion under Article 17(2) in conjunction with Article 21(2) of the GDPR for credit assessment purposes under Section 152 of the Trade Regulation Act? If so, how is it ensured that no further processing takes place for purposes of Section 151 GewO?
- 35.4. Deletion following successful objection to credit assessment: Does CRIF still store data on data subjects who have requested deletion under Article 17(2) in conjunction with Article 21(1) of the GDPR for direct marketing purposes pursuant to Section 151 of the GewO? If so, how is it ensured that no further processing takes place for purposes of Section 152 GewO?
- 35.5. Separation from genuine creditworthiness data ("negative data"): How does CRIF ensure that data entered in the database on the basis of circumstances actually relevant to creditworthiness are not also processed for the purposes of § 151 GewO? Data from the edict file (insolvencies, judicial auctions) or data which CRIF receives from debt collection agencies or lawyers on the occasion of a debt collection case are to be thought of (see point 2 of CRIF's data protection declaration, Annex 6). The collection of data for direct marketing purposes from these sources would be a clear violation of § 151(3) GewO. But also a subsequent change of purpose of the processing of data from these sources (from Section 152 to Section 151 GewO) would be inadmissible for the reasons mentioned in point 3.3.2.2. below (incompatibility of purposes).
- 35.6. Information to data subjects at the time of collection: How does CRIF inform data subjects of the collection of data from an address publisher such as AZ Direct in accordance with Article 14 of the GDPR? Is any information provided at all? If so, does this information only refer to processing for the purposes of Section 151 of the Trade Regulation Act or does it also inform about processing for the purposes of Section 152 of the Trade Regulation Act? The complainant raised the question of information in Annex 3, but CRIF left it unanswered.
- 35.7. Information to data subjects in the event of a change of purpose: If CRIF collects personal data from address publishers only for the purposes of Section 151 of the Trade Regulation Act, how are the data subjects informed of the change of purpose to the purposes of Section 152 of the Trade Regulation Act in accordance with Article 14(4) of the GDPR? Is any information provided at all? If so, how?
- 35.8. Dealing with notifications pursuant to Article 19 of the GDPR by address publishers: How does CRIF deal with notifications by AZ Direct or other address publishers according to which a data subject has requested the correction, erasure or restriction of processing from the address publisher? What are the consequences of receiving such a notification in relation to processing for the purposes of Section 152 of the Trade Regulation Act of data collected from the address publisher concerned?
- 35.9. Data protection by design of technology: In the light of the points just mentioned, to what extent does the purpose-mixed database operated by CRIF take into account the obligation of data protection by design of technology under Article 25(1) GDPR - in particular with regard to the effective implementation of the purpose limitation principle?

- 35.10. Data protection declaration: CRIF's data protection declaration (Annex 6) also leaves all these questions completely open, as it does not differentiate and violate data categories and processing purposes, but presents CRIF's processing operations in a completely non-transparent and incomprehensible manner, although Section 151 GewO and Section 152 GewO deal with two completely different fields of business. Thus, CRIF additionally violates Article 5(1)(a) and Article 14 of the GDPR, even if this privacy statement would be brought to the attention of a data subject at the time of data collection or change of purpose pursuant to Article 14 of the GDPR (which never happened in the case of the complainant).
36. CRIF seems to have completely disregarded all these issues when designing its database within the meaning of Articles 24 and 25 of the GDPR. The complainant therefore suggests that the DPO investigate these factual elements together with the questions raised in paragraphs 20 and 22, in particular by inspecting data processing operations at CRIF's premises pursuant to Article 58(1)(a), (b), (e) and (f) DPA in conjunction with Section 22(1) and (2) DPA and Section 54 AVG.
37. The violation of the principle of purpose limitation by CRIF is therefore already manifested in the present case, in any case, by the factual technical design of the purpose-mixed database and the systematic, large-scale data collection from address publishers (see point 3.2). Depending on the specific data collection situation, the principle of purpose limitation is also violated, as explained below.

3.3.2.2. Further processing for the purposes of § 152 GewO is inadmissible

38. If CRIF has indeed collected the complainant's personal data exclusively within the framework of Section 151 of the GewO for its own direct marketing purposes or for the direct marketing purposes of third parties, the processing carried out for the purpose of assessing the complainant's creditworthiness constitutes further processing. However, according to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR, this further processing purpose is completely incompatible with the purpose for which the data was collected:
39. There is no close link between the purposes (Article 6(4)(a) GDPR) reference can be made to the explanations in paragraphs 28.1 and 28.2
40. The collection context (Article 6(4)(b) GDPR) also speaks against a compatibility of the purposes:
- 40.1. Reference can be made here (mutatis mutandis) to the statements in paragraphs 29.1, 29.2 and 29.3. The complainant also has no contractual relationship whatsoever with CRIF and could not, under any circumstances, expect CRIF to collect his data from an address publisher for the purpose of direct marketing to third parties within the meaning of Section 151 of the GewO and then to process them further in accordance with Section 152 of the GewO.
- 40.2. With regard to the collection context of Article 6(4)(b) of the GDPR, it is also significant that CRIF also has a trade licence pursuant to Section 151 of the GewO and is thus bound by the restrictions of this provision. In reality, however, CRIF uses the authorisation under

Section 151 GewO as a mere "cover" to process data for creditworthiness purposes immediately after collection:

- 40.3. Section 151(3) of the Trade Regulation Act permits the "collection of data" (= "collection" according to the terminology of the GDPR) from the marketing file systems of other address publishers to the extent that this is necessary, taking into account the principle of proportionality, for [line 1] "the preparation and implementation of third-party marketing campaigns, including the design and dispatch of advertising materials" or [line 2] "list broking" and is permissible pursuant to Section 151(4) and (5) of the Trade Regulation Act. Section 151(3) GewO thus provides for restrictions on the disclosure of data even *within the* direct marketing purpose and in particular requires a proportionality test.
- 40.4. However, processing for credit assessment purposes is much more intrusive than processing for direct marketing purposes (see paragraph 31). It is therefore completely disproportionate to (supposedly) collect data for the purposes mentioned in section 151(3) of the GewO, but then immediately process it for the purposes of section 152 of the GewO.
- 40.5. To use CRIF's trade licence under Section 151 of the Trade Regulation Act only for the collection of personal data from another address publisher, but in reality to process the data immediately for the purposes of Section 152 of the Trade Regulation Act, seems to be an abuse of rights in this context. This must be taken into account accordingly in the purpose compatibility check - and also leads to illegality pursuant to Article 6(1)(f) of the GDPR; see paragraph 56.3).
41. With regard to the relationship between the data subject and the controller under Article 6(4)(b) of the GDPR, reference can be made to paragraph 8 and 29.2. The fact that CRIF collected his data from the address publisher AZ Direct and processed them for credit assessment purposes was done without his intervention and completely behind his back.
42. Regarding the possible consequences of further processing (Article 6(4)(d) GDPR), reference can be made to point 31.
43. Finally, CRIF has not put in place any safeguards within the meaning of Article 6(4)(e) in conjunction with Articles 24, 25 and 32 of the GDPR to protect the rights and freedoms of the complainant. As already explained under point 3.3.2.1, the exact opposite seems to be the case: CRIF maintains a "mixed-purpose" database in which the data are processed unfiltered for the purposes of Section 151 GewO and Section 152 GewO.
44. As a result, further processing by CRIF of the complainant's personal data collected by the address publisher AZ Direct for the purpose of assessing the complainant's creditworthiness violates Article 5(1)(b) in conjunction with Article 6(4) of the GDPR. This also applies in general to all other personal data collected by CRIF from address publishers within the meaning of Section 151 GewO (see paragraph 15).

3.3.2.3. Collection already for purposes of § 152 GewO from address publisher is also inadmissible

45. If, on the other hand, CRIF has already collected the complainant's personal data from the address publisher AZ Direct for the purpose of assessing creditworthiness within the meaning of Section 152 of the GewO, the violation of the purpose limitation principle manifests itself in a different way, but remains just as valid. Moreover, in this case AZ Direct has inevitably violated Article 5(1)(b) in conjunction with Article 6(4) of the GDPR - see point 3.3.1.
46. The principle of purpose limitation has a third-party binding effect and thus also extends to "cross-controller" processing chains.³ Processing by a third party must also be carried out for the same original purpose, or it must be compatible further processing within the meaning of Article 5(1)(b) in conjunction with Article 6(4) of the GDPR.
47. The complainant's data subject of the complaint were collected and processed by the address publisher AZ Direct (original responsible party) for direct marketing purposes of third parties within the meaning of § 151 GewO. If this data is now collected and processed by CRIF (as a third party) for the purpose of assessing creditworthiness within the meaning of § 152 GewO, this also constitutes further processing. The purpose of further processing would now have to be compatible with the original purpose within the meaning of Article 6(4) of the GDPR. This is not the case for the reasons stated in point 3.3.2.2. which are referred to in order to avoid repetition.
48. Furthermore, the legitimacy of CRIF's purpose in collecting the data is already lacking. As already explained in paragraph 29.3 the collection of data by CRIF from address publishers such as AZ Direct may result in continuous, systematic infringements of trade law.
49. According to Article 5(1)(b) GDPR, personal data must be collected for specified, explicit and legitimate purposes. According to WP 203 of the Article 29 Working Party of 02.04.2013, page 19, the principle of purpose limitation requires that data may only be collected for purposes that are in compliance with data protection law and other legal provisions:
- „[...] the purposes must be in accordance with all provisions of applicable data protection law, as well as other applicable law such as employment law, contract law, consumer protection law, and so on.*
- The requirement of legitimacy means that the purposes must be 'in accordance with the law' in the broadest sense. "*
- [\[https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2013/wp203_en.pdf\]](https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2013/wp203_en.pdf)
50. The collection of data for credit assessment purposes may not be illegitimate *per se*. There are scenarios in which this may be permissible in individual cases (e.g. in the case of a debtor who has actually been dunned several times and who does not dispute the correctness of the debt). The systematic collection of personal data without any reason
- (i) under ongoing trade law infringements,

³ See e.g. *Frenzel* in Paal/Pauly (eds.), *Datenschutzgrundverordnung Bundesdatenschutzgesetz2* (2018), Art 5 DSGVO Rz 29.

- (ii) without a specific reason in the individual case, but rather on a stock basis,
- (iii) without any information pursuant to Article 13/14 of the GDPR
- (iv) of consumers who have never been in payment difficulties
- (v) in the case of an address publisher within the meaning of § 151 GewO

can never serve a legitimate purpose, however, since the specific purpose - the credit rating of persons for whom not even "negative payment experience data" is available - can never be realised without violating rights.

51. Since there is no purpose compatibility within the meaning of Article 5(1)(b) in conjunction with Article 6(4) of the GDPR and, moreover, the specific purpose of the collection cannot be regarded as legitimate, the collection of the complainant's data for the purpose of assessing his creditworthiness within the meaning of Section 152 of the Trade Regulation Act was unlawful pursuant to Article 5(1)(b) of the GDPR. The same applies to all other personal data that CRIF collected from address publishers within the meaning of Section 151 GewO (see paragraph 15).

3.4. Unlawfulness of the processing operations

3.4.1. Unlawfulness of the transfer of data from AZ Direct to CRIF (processing activity 1)

52. Irrespective of whether the DPO assumes a violation of the purpose limitation principle by AZ Direct or not, the transfer of data by AZ Direct to CRIF cannot be based on a legal basis within the meaning of Article 6(1) of the GDPR: Article 6(1)(d) and (e) DSGVO are obviously not relevant. There is no consent or contractual relationship under Article 6(1)(a) and (b) of the GDPR, nor is there a legal obligation (Article 6(1)(c) of the GDPR).
53. The only possible legal basis is therefore Article 6(1)(f) of the GDPR. Here, however, the balance of interests is clearly in favour of the confidentiality interests of the complainant:
- 53.1. The processing purpose "assessment of creditworthiness in the context of Section 152 of the Trade Regulation Act" is very intrusive, can lead to the transmission of creditworthiness scores by CRIF to its customers and, in the case of incorrect or inexplicably poor creditworthiness scores, also to a serious disadvantage for the complainant in business transactions. This applies not least because the processing by CRIF is carried out by means of profiling pursuant to Article 4(4) of the GDPR and also entails automated individual case decisions pursuant to Article 22 of the GDPR (at the level of CRIF or at the level of CRIF's customers) (see already paragraph 31). Even *if* the DPA should assume a fundamental purpose compatibility iSd iSd Article 5(1)(b) in conjunction with Article 6(4) DPA, the new processing purpose "credit assessment in the context of Section 152 GewO" may therefore lead to massive disadvantages for the complainant, which must be taken into account accordingly in the balancing of interests.

- 53.2. According to recital 47 of the GDPR, the reasonable expectations of a data subject must also be included in the balancing of interests. The fact that an address publisher - which only has a business licence pursuant to Section 151 of the Trade Regulation Act (GewO) - passes on personal data to a credit reference agency and that the latter processes the data for the purpose of assessing creditworthiness is completely surprising for a person like the complainant, who has never been in payment difficulties. Moreover, as explained, the complainant does not have any contractual relationship with AZ Direct or CRIF. Nor is the data concerned information published with the complainant's involvement, but data from AZ Direct's private stock (where AZ Direct got the data from is unclear to the complainant). Finally, the complainant was never informed either by AZ Direct or by CRIF of any collection of data or changes of purpose within the meaning of Article 14(1), (2) or (4) of the GDPR. He only learned of the data processing on the occasion of his request for information (see in particular paragraph XXX).
- 53.3. In addition, there is the possible violation of trade law by CRIF and AZ Direct in connection with the transmission and collection of the complainant's personal data. An interest that entails the violation of legal provisions can never be qualified as "legitimate". Reference can be made to the comments in paragraph 29.3 and paragraph 48 et seq.
54. As a result, a transfer of the complainant's personal data by the address publisher AZ Direct to CRIF for the purpose of assessing the complainant's creditworthiness cannot be justified under Article 6(1)(f) DSGVO. In the absence of any other justification, the processing thus violates Article 6(1) DSGVO. This also applies in general to all other personal data transmitted to CRIF by an address publisher within the meaning of Section 151 of the GewO, such as AZ Direct (see paragraph 15).

3.4.2. Unlawfulness of data collection and (further) processing by CRIF (processing activities 2 and 3)

55. According to its privacy statement (Annex 6), CRIF bases the processing of the complainant's data for credit assessment purposes on Article 6(1)(f) DSGVO:
- *"our overriding legitimate interests in being able to offer and provide our credit agency and address publishing products and services on the market (Art. 6 para. 1 lit. f DSGVO);*
 - *the overriding legitimate interests of our customers in obtaining the products and services of CRIF GmbH for the purposes of internal customer risk management, creditor protection and the fulfilment of customers' statutory audit obligations as well as for direct marketing purposes (Art. 6 (1) lit. f DSGVO);"*
56. However, the processing of the complainant's data - or, more generally, the processing of data collected by the credit reference agency CRIF from an address publisher (such as AZ Direct) - can never be justified under Article 6(1)(f) of the GDPR. In particular, the complainant has an overriding interest in secrecy within the meaning of Section 1 of the Data Protection Act not to be stored against his or her will in the database of a credit reference agency. The balancing of interests is clearly in favour of the confidentiality interests and fundamental rights/freedoms of the complainant for the following reasons in particular:

- 56.1. The purpose of processing "creditworthiness assessment within the scope of Section 152 GewO" is very intrusive - incomparably more intrusive than the purpose of processing for direct marketing purposes within the scope of Section 151 GewO. To avoid repetition, see paragraph 53.1.
- 56.2. The highly problematic circumstances of the collection, which are contrary to the GDPR, and the processing in a mixed-purpose database alone are blatantly detrimental to CRIF and clearly outweigh the complainant's interests. In order to avoid repetitions, reference can be made here to the statements in point 3.3.2, in particular paragraphs 35 et seq. and 50.
- 56.3. It should also be noted that CRIF may use the trade licence under section 151 of the Trade Licensing Act (GewO) as a "cloak" to disguise data collection as data transfer between address publishers, whereas the data is actually collected and (further) processed for credit assessment purposes within the meaning of section 151 of the Trade Licensing Act (see already paragraph 40.2ff.).
- 56.4. As regards reasonable expectations of the complainant within the meaning of recital 47 of the GDPR, reference can be made to paragraph 53.2
- 56.5. The interest is also not justified on the part of CRIF - see mutatis mutandis paragraph 53.3
57. In this respect, the collection and (further) processing of the complainant's data were and are not justified under Article 6(1)(f) of the GDPR. This applies irrespective of whether CRIF collected the data for purposes of Section 151 of the Trade Regulation Act and further processed them for purposes of Section 152 of the Trade Regulation Act, or already collected the data for purposes of Section 152 of the Trade Regulation Act, and irrespective of whether the DPO assumes that CRIF has violated the purpose limitation principle or not.
58. The German Data Protection Conference (to which all German federal and state data protection authorities belong) has already reached the same conclusion in a resolution of 11 June 2018. It states that the collection of so-called "positive data" is not possible on the basis of legitimate interests:

"As a rule, commercial and credit agencies cannot collect so-called positive data on private individuals on the basis of Article 6 (1) (f) of the GDPR. This is because in the case of positive data - i.e. information that does not contain any negative payment experiences or other non-contractual conduct - the legitimate interest of the data subjects to determine the use of their data themselves regularly prevails. If the data is transmitted by a data controller to a credit agency, the transmission of this data is in this respect already regularly inadmissible pursuant to Art. 6 para. 1 sentence 1 lit. f DS-GVO. "

(https://www.datenschutzkonferenz-online.de/media/dskb/20180611_dskb_verarbeitung_positivdaten.pdf)

This correct view is not limited to the Federal Republic of Germany. In Austria, where the GDPR applies equally, nothing else can be the case.

59. The UK Information Commissioner (ICO) ultimately stated in a report published in October 2020 that the reverse situation - the processing of data collected for credit assessment purposes for direct marketing purposes - would require the consent of the data subject:

"Key finding 3

The CRAs were using personal data collected for credit referencing purposes for direct marketing purposes.

The CRAs must not use this data for direct marketing purposes unless this has been transparently explained to individuals and they have consented to this use.

Where the CRAs are currently using personal data obtained for credit referencing purposes for direct marketing, they must stop using it. "

(<https://ico.org.uk/media/action-weve-taken/2618470/investigation-into-data-protection-compliance-in-the-direct-marketing-data-broking-sector.pdf>; Seite 31. CRAs = Credit Reference Agencies)

Nothing else can apply in the present case: Processing of address publisher data for credit assessment purposes would require the consent of the data subject.

60. As a result, (further) processing of the complainant's personal data collected by the address publisher AZ Direct for the purpose of assessing the complainant's creditworthiness cannot be justified under Article 6(1)(f) of the GDPR. In the absence of any other justification, the processing thus violates Article 6(1) DSGVO. This also applies in general to all other personal data that CRIF has collected from address publishers within the meaning of Section 151 GewO (see paragraph 15).

4. MOTIONS AND REQUESTS

4.1. Request for comprehensive investigation

The complainant requests the DPO to fully investigate this complaint in accordance with the powers conferred on the DPO under Article 58(1) of the GDPR, in particular to clarify the following factual elements:

General:

- (i) What are the answers to the questions raised in paragraph 22?

AZ Direct:

- (ii) Did AZ Direct transmit personal data of the complainant to CRIF for direct marketing purposes of CRIF or direct marketing purposes of third parties within the meaning of section 151 GewO, whereby AZ Direct knew or should have known that CRIF was in fact (further) processing these data for credit assessment purposes within the meaning of section 152 GewO?
- (iii) Did AZ Direct transmit personal data of the complainant to CRIF for credit assessment purposes within the meaning of § 152 GewO?

CRIF:

- (iv) To what extent does CRIF actually maintain a mixed-purpose database as set out in point 3.3.2.1 particular, the questions raised in paragraphs 35.1. to 35.9 should be clarified.
- (v) Did CRIF collect personal data of the complainant from the address publisher AZ Direct for its own direct marketing purposes or for the direct marketing purposes of third parties within the meaning of § 151 GewO and then process them for credit assessment purposes within the meaning of § 152 GewO?
- (vi) Does CRIF generally collect personal data of natural persons for its own direct marketing purposes or direct marketing purposes of third parties within the meaning of Section 151 GewO from address publishers within the meaning of Section 151 GewO and then process them further for credit assessment purposes within the meaning of Section 152 GewO?
- (vii) Has CRIF already collected personal data of the complainant from AZ Direct, an address publisher within the meaning of § 151 GewO, for credit assessment purposes within the meaning of § 152 GewO?
- (viii) Does CRIF generally collect personal data of natural persons for credit assessment purposes within the meaning of § 152 GewO from address publishers within the meaning of § 151 GewO?

4.2. Request for a declaration of infringement

The DPO may

- after the specific data processing operations have been identified,
- whether or not AZ Direct and/ or CRIF should have subsequently remedied the breaches of Article 5(1)(b), Article 6(4) DPA and Article 6(1) DPA pursuant to Section 24(6) DPA in the proceedings before the DPO,

decide by notice as follows:

AZ Direct:

- (i) AZ Direct has violated the principle of purpose limitation pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR by transferring personal data of the complainant to the credit reference agency CRIF, although AZ Direct knew or should have known that CRIF would process these data for credit assessment purposes within the meaning of Section 152 of the GewO.

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AZ Direct has violated the principle of purpose limitation pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR by transmitting the complainant's personal data to the credit reference agency CRIF for the purpose of assessing his creditworthiness pursuant to Section 152 of the GewO.

- (ii) AZ Direct has infringed Article 6(1) of the GDPR by transferring personal data of the complainant to CRIF without being able to rely on a justification under Article 6(1) of the GDPR.

CRIF:

- (iii) CRIF has violated the principle of purpose limitation pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR by processing personal data of the complainant in its database in a way that does not allow to distinguish the processing of individual personal data according to the purposes "own direct marketing purposes or direct marketing purposes of third parties" iSd 151 GewO" and "credit assessment purposes iSd § 152 GewO" and to process the data separately and for a specific purpose.

- (iv) CRIF has violated the principle of purpose limitation pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR by collecting personal data of the complainant from the address publisher AZ Direct for its own direct marketing purposes or direct marketing purposes of third parties within the meaning of Section 151 of the Trade Regulation Act (GewO) and then further processing them for credit assessment purposes within the meaning of Section 152 of the Trade Regulation Act (GewO).

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CRIF has violated the principle of purpose limitation pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR by collecting and processing personal data of the complainant for credit assessment purposes within the meaning of Section 152 of the GewO at AZ Direct.

- (v) CRIF has infringed Article 6(1) of the GDPR by collecting personal data of the complainant from the address publisher AZ Direct for its own direct marketing purposes or for the direct marketing purposes of third parties within the meaning of Section 151 of the Trade Regulation Act (GewO) without being able to rely on a justification pursuant to Article 6(1) of the GDPR and then processing this data for credit assessment purposes within the meaning of Section 152 of the Trade Regulation Act (GewO).

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CRIF has infringed Article 6(1) of the GDPR by collecting and processing personal data of the complainant from the address publisher AZ Direct for credit assessment purposes within the meaning of Section 152 of the GewO without being able to rely on a justification pursuant to Article 6(1) of the GDPR.

4.3. Request to impose a processing ban

The complainant requests that CRIF be prohibited by decision pursuant to Article 58(2)(f) DSGVO from processing his personal data collected by CRIF from AZ Direct for credit assessment purposes within the meaning of Section 152 GewO.

The complainant requests the DPO to prohibit CRIF's practice of collecting personal data from address publishers within the meaning of Section 151 of the Trade Regulation Act and processing them for credit assessment purposes within the meaning of Section 152 of the Trade Regulation Act by decision pursuant to Article 58(2)(f) of the GDPR.

At the same time, AZ Direct shall be prohibited by notice from transmitting personal data to credit reference agencies within the meaning of Section 152 of the German Trade Regulation Act (GewO) pursuant to Article 58(2)(f) of the Data Protection Regulation (DSGVO) if AZ Direct knows or must know that the credit reference agency (further) processes the data received for the purpose of assessing creditworthiness within the meaning of Section 152 of the GewO.

4.4. Requesting the imposition of effective, proportionate and dissuasive financial penalties

Finally, the complainant suggests that, pursuant to Article 58(2)(i) in conjunction with Article 83(5)(b) GDPR, an effective, proportionate and dissuasive fine be imposed on AZ directly and/or on CRIF, taking into account - depending on the outcome of the investigation procedure before the DPA - that

- (i) the complainant is in all probability only one of possibly millions of affected Austrians,
 - a. whose data AZ Direct has transmitted to a credit agency as defined in Section 152 of the German Trade Regulation Act (GewO) in breach of Articles 5(1)(b), 6(1) and 6(4) of the DSGVO, and

- b. whose data CRIF has collected from an address publisher within the meaning of Section 151 of the Trade Regulation Act in breach of Articles 5(1)(b), 6(1) and 6(4) of the Trade Regulation Act and now processes for credit assessment purposes within the meaning of Section 152 of the Trade Regulation Act (Article 83(2)(a) of the Trade Regulation Act);
- (ii) the infringement was manifestly systematic and intentional (Article 83(2)(b) GDPR);
- (iii) there is a high degree of responsibility: CRIF carries out intrusive processing operations, but has not provided for any technical and organisational measures within the meaning of Article 25 of the GDPR to comply with the principles of data processing - rather, the data collection and storage model in a purpose-mixed database is not only completely unsuitable to prevent data protection breaches, it even produces them continuously and inevitably (83(2)(d) GDPR);
- (iv) both CRIF and the address publishers who supply CRIF (such as AZ Direct) have been reaping immense financial benefits for years or even decades from their cooperation, which is contrary to data protection and trade law: CRIF can only process and resell data on a large part of the stored Austrians because this data was acquired from an address publisher within the meaning of Section 151 of the Trade Regulation Act (83(2)(k) of the GDPR).

5. OTHER

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

Vienna, 15.03.2021