



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

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

noyb Case no: C044

brought in by

[REDACTED]

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*")

Sync and corrected by dr.jackson for

- 1) CRIF Bürgel GmbH, Leopoldstraße 244, 80807 Munich (hereinafter "CRIF Bürgel") and
- 2) Acxiom Deutschland GmbH, Martin-Behaim Straße 12, 63263 Neu-Isenburg, (hereinafter "Acxiom").

CRIF Bürgel and Acxiom 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 can be made by e-mail to [REDACTED], referring to the case number mentioned in the title of this complaint.

2. COMPETENT SUPERVISORY AUTHORITY

3. Pursuant to Article 77 and Recital 141 of the GDPR, a data subject has the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement. The complainant residing in Berlin, Germany, is thus free to lodge the complaint with a data protection supervisory authority within the Federal Republic of Germany.
4. The further competence of the supervisory authority is based on Section 40 (2) Sentence 1 BDSG in conjunction with Article 4(16) DSGVO according to the main establishment of the responsible parties (respondent). Since both Acxiom has a location (Karlstraße 66, 80335 Munich) and CRIF Bürgel has its main office (Leopoldstraße 244, 80807 Munich) in Munich, the complaint will be filed with the Bavarian State Office for Data Protection Supervision. Should The Hessian Commissioner for Data Protection and Freedom of Information also be competent due to Acxiom's main branch in Hesse (Martin-Behaim Str. 12, 63263 Neu-Isenburg), a joint investigation pursuant to § 40(2) sentence 2 in conjunction with §§ 18(2), 19 BDSG, § 3(3) VwVfG is suggested.

3. CONTENTS

5. By letter of 15 December 2020 (Annex 3), the complainant addressed a request for information to Acxiom pursuant to Article 15 of the GDPR. In addition to requesting a copy of his data, this request for information contained various questions regarding the origin, processing, transfer and recipients of his data. At the same time, the complainant requested, pursuant to Articles 18 and 21 of the GDPR, that his data no longer be disclosed and no longer be used for advertising purposes (request for restriction and objection).
6. Acxiom responded to this request for information by letter dated 20.01.2021 (Annex 4). The actual information can be found in the annex to this letter and is entitled "Annex to the information pursuant to Article 15 of the GDPR" (Annex 5). As can be seen from this, Acxiom processes several personal data of the complainant, more precisely the first and last name, address, gender and year of birth. In addition, it can be seen that Acxiom has disclosed the name and address data to CRIF Bürgel in the last 24 months (see "Recipient of the data").
7. By letter of 8 February 2021 (Exhibit 6), the complainant therefore addressed a request for information to CRIF Bürgel pursuant to Article 15 of the GDPR. This request for information also contained - in addition to the request for a copy of his data - various questions on the origin, processing, transfer and recipients of his data. As was the case with Acxiom, the complainant requested, pursuant to Articles 18 and 21 of the GDPR, that his data no longer be disclosed and no longer be used for advertising purposes (request for restriction and objection).
8. By letter of 11.03.2021 (Exhibit 7), CRIF Bürgel replied to this request for information. As can be seen from this reply, CRIF Bürgel processes several personal data of the complainant, more precisely his first and last name as well as his current and former addresses. The source of the former and current address data is exclusively Acxiom (see "Data source"). In addition, CRIF Bürgel states that it has no payment experience with regard to the complainant. At the same time, a creditworthiness score of 550 points was calculated, which was sent to the debt

collection company EOS KSI Deutschland GmbH (hereinafter EOS KSI) on 28.10.2020. The letter was accompanied by an information sheet from CRIF Bürgel regarding the credit inquiry procedure (Annex 8, available online as part of the data protection declaration at <https://www.crifbuergel.de/media/2106/informationsblatt-art-14-crif-buergel-gmbh.pdf>).

9. By letter of 19 March 2021 (Exhibit 9), the complainant queried the information provided by CRIF Bürgel, since it did not contain any information as to the exact date of receipt of the data from Acxiom, their storage period, the disclosure of data to certain recipients and the purposes of the transfer. The complainant thus again requested information on this, repeated his request for restriction and again objected to the use of his data for direct marketing purposes.
10. In a letter dated 8 April 2021 (Annex 10), CRIF Bürgel replied that it would not be necessary to obtain a declaration of consent for the businesslike collection and storage of data for transmission purposes. CRIF Bürgel was entitled to transmit the data collected and stored on the basis of a credible justified interest of the recipient of the information. In addition, a correction, restriction or deletion could only be considered in the case of incorrect data. The letter was accompanied by updated information (pages 3, 4) and again by the information sheet of CRIF Bürgel concerning the information procedure (Annex 8).
11. By letter of 23 April 2021 (Exhibit 11), the complainant again turned to CRIF Bürgel, which left unanswered his queries concerning the date of collection, origin and recipients of the data, blocking notifications, purposes of processing and requests for restriction of his data. The complainant supplemented this by letter of 5 May 2021 (Exhibit 12) with questions concerning the transfer of creditworthiness data from CRIF Bürgel to EOS KSI of 28 October 2020. Since both letters remained unanswered, the complainant sent a reminder to CRIF Bürgel on 8 June 2021 (Exhibit 13).
12. In the meantime, the complainant contacted Acxiom by letter of 05.05.2021 (Exhibit 14) to enquire about any changes of purpose of the data collected and transmitted about him at Acxiom. Acxiom, in a letter dated 31.05.2021 (Exhibit 15), stated that it had not made any changes of purpose and had transferred address data to CRIF Bürgel for use in the ordinary course of business. In the meantime, however, the data would have been blocked for processing for all purposes.
13. By letter of 9 June 2021 (Annex 16), CRIF Bürgel informed the complainant that corrections had already been made to the complainant's data. However, no information could be provided on the recipient of the information, EOS KSI. Moreover, CRIF Bürgel did not process the complainant's information for direct marketing purposes, so that his objection could not be met. The letter was again accompanied by information (pages 2 and 3) and the information sheet of CRIF Bürgel concerning the credit inquiry procedure (Annex 8).

4. GROUNDS FOR APPEAL

4.1. Violated rights

14. Without prejudice to the right of the complainant to make further submissions on additional grounds of complaint, and subject to the power of the competent supervisory authority or authorities to conduct inquiries beyond the specific grounds set out herein, the complainant alleges the following breaches of law:
15. **Purpose limitation principle pursuant to Article 5(1)(b) in conjunction with Article 6(4) DSGVO:** Acxiom collects and processes the Complainant's Address Data according to its own explanations (Exhibit 4, page 1) for the purpose of direct marketing. In doing so, Acxiom creates analyses and statistics with the stored personal data, verifies, updates and supplements customer address databases, compares databases with each other and rents out addresses for advertising purposes. CRIF Bürgel, on the other hand, states (Annex 8, point 2.1) that it processes data for the purpose of assessing creditworthiness. Thus, either the transmission of the data by Acxiom to CRIF Bürgel or the collection or (further) processing of the data by CRIF Bürgel constitutes a change of purpose.
- 15.1. **Acxiom breaches:** Acxiom collected the complainant's data for the purpose of direct marketing, but later transferred it to CRIF Bürgel for the purpose of credit assessment, a purpose incompatible with the original purpose of collection by Acxiom under Article 5(1)(b) in conjunction with Article 6(4) DPA. Article 6(4) DSGVO.
- 15.2. **Infringements by CRIF Bürgel:** Either CRIF Bürgel originally collected the complainant's data for the purpose of direct marketing, but then further processed them for the purpose of credit assessment, although these purposes are incompatible pursuant to Article 5(1)(b) in conjunction with Article 6(4) DPA. Article 6(4) of the GDPR, or CRIF Bürgel has already originally collected the data for the purpose of credit assessment, a purpose which is incompatible with the original purpose on the part of the data provider Acxiom pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR. Article 6(4) DSGVO. CRIF Bürgel also maintains a mixed-purpose database in which the data are not kept and processed separately according to the purposes of direct marketing and credit assessment, and which therefore contravenes Article 5(1)(b) of the GDPR.
16. **Lawfulness of the data processing pursuant to Article 6(1) DSGVO:** Acxiom invokes legitimate interests pursuant to Article (6)(1)(f) of the GDPR for the processing and use of address data for direct marketing purposes (Annex 4, page 1); consent of the data subjects is not necessary. CRIF Bürgel also considers that it is not necessary to obtain consent for the businesslike collection of data for the purpose of transmission on the basis of credible legitimate interests of recipients of the credit reports (Exhibit 10, page 1).
- 16.1. **Infringements by Acxiom:** Acxiom cannot base the (further) processing of the complainant's personal data in the form of the transfer to CRIF Bürgel on any justification under Article 6(1) DSGVO. In particular, there are no legitimate interests of Acxiom or third parties within the meaning of Article 6(1)(f) of the GDPR that are not outweighed by the interests and fundamental rights of the complainant.

- 16.2. **Infringements by CRIF Bürgel:** CRIF Bürgel cannot base the collection and (further) processing of the complainant's personal data on any justification under Article 6(1) of the GDPR. In particular, there are no legitimate interests of CRIF Bürgel or third parties within the meaning of Article 6(1)(f) of the GDPR that are not outweighed by the interests and fundamental rights of the complainant.
17. **Information requirements for data collections pursuant to Article 14 of the GDPR:** The complainant does not have and has never had any business relationship with Acxiom or CRIF Bürgel. He has never provided data to any of these companies himself. He first learned that Acxiom and CRIF Bürgel had collected and processed personal data about him on the basis of the replies to his requests for information (Annexes 4 and 7). The complainant never received any information in accordance with the law on the occasion of the data collection or possible change of purpose pursuant to Article 14(1)-(4) of the GDPR.
- 17.1. **Violations by Acxiom:** Acxiom did not inform the complainant about the collection of his data, nor about any further processing for other purposes and which violated the information obligations under Articles 14(1)-(4) GDPR. In particular, Acxiom never informed the Complainant in accordance with Article 14(1)(e) GDPR that the collected data would be transferred to credit reporting agencies in general, or CRIF Bürgel in particular. The subsequent information provided in the context of the response to the complainant's request for information pursuant to Article 15 GDPR does not comply with the legal information requirements.
- 17.2. **Infringements by CRIF Bürgel:** CRIF Bürgel did not inform the complainant about the collection of his data at Acxiom, nor about the further processing for purposes of creditworthiness assessment, and thus infringed the information obligations under Articles 14(1)-(4) of the GDPR. The subsequent information provided in the context of the response to the complainant's request for information pursuant to Article 15 of the GDPR does not comply with the statutory information obligations.
18. **Restriction of processing pursuant to Article 18 of the GDPR:** The complainant requested CRIF Bürgel to restrict the processing of his personal data. CRIF Bürgel then claimed that the right to restrict processing only existed if the data in question were "incorrect", rejected the complainant's request for restriction and demanded a specific designation of incorrect data (Annex 10, page 1). This is manifestly unlawful, since contesting the accuracy of data under Article 18(1)(a) of the GDPR is only one of four grounds for restriction and the complainant did not base his request on Article 18(1)(a) of the GDPR, but on Article 18(1)(b) and (d) of the GDPR.
19. **Protection of commercial transactions in the case of scoring and creditworthiness information in accordance with § 31 BDSG:** Assuming that § 31 BDSG is applicable, CRIF Bürgel is in breach of the conditions laid down therein for the admissibility of credit scoring and the protection of commercial transactions. CRIF Bürgel disregards the compliance with applicable data protection regulations (§ 31(1) No. 1 BDSG), cannot provide evidence that only substantial data (§ 31(1) No. 2 BDSG) or not only address data (§ 31(1) No. 3 BDSG) have been included in the score calculation and has not informed the complainant in accordance with § 31(1) No.4 BDSG.
20. In the following, the violations set out are justified in detail.

4.2. Infringement of the purpose limitation principle under Articles 5(1)(b), 6(4) of the GDPR by both respondents.

21. According to its own information, Acxiom collects and processes personal data for the purpose of direct marketing (Enclosure 4, page 1):

"As part of our direct marketing activities, we use the personal data we store to compile statistics and analyses, verify, update and add to our customer's address databases, reconcile databases with each other and lease addresses for promotional purposes."

22. CRIF Bürgel, on the other hand, according to its own information, collects and processes the complainant's data for the purpose of assessing its creditworthiness (Exhibit 8, point 2.1):

"CRIF Bürgel GmbH processes personal data in order to provide authorised recipients with information for assessing the creditworthiness of natural and legal persons."

23. The purposes of the processing of the complainant's personal data at Acxiom and CRIF Bürgel are thus not the same. However, given that CRIF Bürgel identifies Acxiom as the sole source of the complainant's personal data (Exhibits 7, 10 and 16, under "Data source"), a change of purpose with regard to the processing of the complainant's data must have taken place at some point. The change of purpose must

- either by the transfer of the complainant's personal data from Acxiom to CRIF Bürgel (hereinafter "Processing Activity 1"),
- or the collection or (further) processing of such data by CRIF Bürgel from Acxiom (hereinafter "Processing Activity 2"),

have taken place.

24. Depending on the assignment of responsibility for the change of purpose, the following results

- either Acxiom knew or should have known that CRIF Bürgel collects data such as that of the complainant for the purpose of assessing creditworthiness or that it processes such data for that purpose immediately after collection,
- or CRIF Bürgel knowingly misrepresented to Acxiom that it was processing collected data such as that of the Complainant for direct marketing purposes only, and Acxiom was entitled to rely in good faith on this misrepresentation.

25. In order to assess the applicable scenario, Acxiom and CRIF Bürgel, as accountable controllers within the meaning of Article 5(2) of the GDPR in conjunction with Article 24 GDPR and Article 31 GDPR, Acxiom and CRIF Bürgel are therefore 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 23 and whether there is joint responsibility or a processing relationship;
- the purposes for which it considers that each of the processing operations referred to in paragraph 23 carried out;

- the legal basis on which it considers that each of the processing operations referred to in paragraph 23 carried out, and
- which of the scenarios 24 in recital 24 applies.

26. In order to clarify these issues, the complainant also requests that Acxiom and CRIF Bürgel be required to submit their processing records pursuant to Article 30 of the GDPR, the contract governing the data collection or deliveries between Acxiom and CRIF Bürgel, and any agreements pursuant to Articles 26 and 28 of the GDPR, respectively.

27. Depending on how these questions are ultimately answered, the data protection violations by Acxiom and CRIF Bürgel described in manifest themselves in different ways. In the following, we will explain in detail how the systematic data transfer and data collection between address publishers (such as Acxiom) and credit reporting agencies (such as CRIF Bürgel) are incompatible with the GDPR.

4.2.1. Infringement by transfer of data from Acxiom to CRIF Bürgel (processing activity 1)

28. The following statements are based on the assumption that Acxiom 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 to CRIF Bürgel ("Processing Activity 1"). If Acxiom is jointly responsible with CRIF Bürgel for this processing activity, the following also concerns CRIF Bürgel.

29. Insofar as Acxiom knew or should have known that CRIF Bürgel was collecting the Complainant's data for the purpose of assessing its creditworthiness or was processing it for this purpose immediately after collection, Acxiom cannot claim in good faith that the data was transferred to CRIF Bürgel solely for direct marketing purposes. Acxiom itself states in this respect (Exhibit 15) that it transfers data to CRIF Bürgel for the "*ordinary course of business*". It is obvious and cannot be denied by Acxiom that the ordinary business operations of a credit agency include the processing of data for credit assessment purposes.

30. Accordingly, the transfer of the complainant's data to CRIF Bürgel already constitutes further processing by Acxiom, which - as set out below - is incompatible with the original collection purpose of the direct marketing pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR. Article 6(4) of the GDPR, is incompatible with the original purpose of the direct marketing survey:

31. There is no close link under Article 6(4)(a) of the GDPR between the original purpose "*direct marketing by Acxiom customers*" and the purpose "*credit assessment of natural persons by Acxiom customer CRIF Bürgel*", quite the contrary:

31.1. A transfer for direct marketing purposes to CRIF Bürgel would aim at CRIF Bürgel subsequently using the data to promote and sell CRIF Bürgel products to the complainant or third parties. Direct marketing is therefore carried out in order to attract new customers or to promote existing customers.

- 31.2. A credit assessment, on the other hand, is carried out in order to check a potential customer and, in the event of insufficient creditworthiness, to refuse to conclude the desired transaction. To put it simply: direct marketing serves to attract customers, credit assessment serves to reject certain customers who are not sufficiently creditworthy.
- 31.3. CRIF Bürgel manifestly and according to its own statements did not use the complainant's data for direct marketing purposes (Exhibit 16, page 1):
- "Furthermore, we would like to inform you that we do not currently process any information held about you by us for the purpose of direct marketing. "*
- 31.4. On the contrary, the processing at CRIF Bürgel aimed at selling personal data concerning the complainant together with a credit score to customers of CRIF Bürgel - which also took place when a credit score of 550 points was transmitted to EOS KSI on 28 October 2020, (Exhibit 7, page 2).
32. The context of collection under Article 6(4)(b) of the GDPR also militates against compatibility of purposes. According to recital 50, sixth sentence of the GDPR, the reasonable expectations of a data subject must be taken into account:
- 32.1. Acxiom did not originally collect the complainant's data, for example, on the occasion of the complainant's breach of contract (non-payment of debts/enforcement by debt collection agency) or over-indebtedness (insolvency, judicial auction). Acxiom is not active in credit assessment, creditor protection, legal enforcement, debt collection or other "credit-related" areas. In this regard, Acxiom itself states (Exhibit 4, page 3):
- "Also, Acxiom is not a credit reporting agency, which means we do not create personalized scores for negative credit, non-payment risk, or comparable financial risks"*
- 32.2. Furthermore, the complainant only learned that Acxiom was processing data about him at all when it replied to his request for information (Annex 3). The complainant neither could nor should have anticipated that Acxiom 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.
- 32.3. This is all the more true since neither Acxiom nor CRIF Bürgel ever informed the complainant even remotely about processing operations pursuant to Articles 13 or 14 of the GDPR. Acxiom already never informed the complainant about a possible or concrete transfer of data to the credit agency CRIF Bürgel for a different purpose or even named it as a recipient. CRIF Bürgel also never informed the complainant of the collection from Acxiom under Article 14(1), (2) GDPR or of a change of purpose under Article 14(4) GDPR. However, in light of Recital 50, sentence 8 of the GDPR, informing the data subject about the change of purpose under Article 14(4) of the GDPR is a condition for the permissibility of further processing:¹

¹ Cf. Feiler/Forgó, EU-DSGVO (2017) Art 6 DSGVO Rz 16.

"In any case, 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. "

- 32.4. In this respect, the lack of information about the change of purpose would therefore lead to the inadmissibility of data processing even for purposes that are compatible per se. For incompatible purposes, as in the case at hand, this must apply even more.
33. 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. The complainant does not have and has not had any business relationship with Acxiom or CRIF Bürgel. He has never provided any data to either of these companies himself. He first learned that Acxiom and CRIF Bürgel had collected and processed personal data about him on the basis of the replies to his requests for information (Exhibits 3 and 6). The fact that Acxiom transmitted his data to CRIF Bürgel for credit assessment purposes happened without his involvement and behind his back.
34. Thus, the possible consequences of further processing under Article 6(4)(d) GDPR are also difficult to assess for the complainant and may well be negative:
- 34.1. Given that Acxiom, as far as can be seen, only had name, (partly historical) addresses, sex and year of birth at its disposal (Exhibit 5) and that it only transmitted name and address data to CRIF Bürgel, it is quite possible that the processing of these data would put the complainant at a disadvantage by calculating a creditworthiness score that is not comprehensible and that a customer of CRIF Bürgel would consider to be insufficient (for instance in order to enter into a legal transaction or to enable purchase on account).
- 34.2. CRIF Bürgel has already calculated a score of 550 points for the complainant and passed this on to EOS KSI on 28.10.2020 (Exhibit 7, page 2), although according to CRIF Bürgel there is no payment experience data on the complainant (Exhibit 7, page 1; "*No payment experience data was found on your person in our own database.* "). In this respect, the calculation of this score lacks a factual basis, as no viable facts are available. It is not without reason that the legislator has enacted a provision in § 31(1) No. 3 BDSG, which prohibits the calculation of creditworthiness scores based solely on address data. However, this is precisely what CRIF Bürgel is apparently doing - or the information (Exhibits 7, 10 and 16) is incomplete pursuant to Article 15(3) DSGVO, since other data were indeed included in the score calculation (such as the "*shopping basket value*" or "*socio-demographic data*" (Exhibit 7, page 2)).
- 34.3. In addition, the processing for credit 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 sometimes also entails automated case-by-case decisions pursuant to Article 22 of the GDPR - if not already at the level of CRIF Bürgel, then at least at the level of CRIF Bürgel's clients, who automatically base their business decisions on the credit scores received. ²

² For example, CRIF Bürgel carries out credit checks for www.lidl.de, one of the highest-turnover e-commerce platforms in Germany; see https://www.lidl.de/c/datenschutz/s10007528_under_4_Securing_the_order_process_and_selection_of_payment_methods" (accessed 23.09.2021). The same applies to www.conrad.de; see [https://www.conrad.de/de/ueber-conrad/rechtliches/datenschutz.html](https://www.conrad.de/de/ueber-conrad/rechtliches/datenschutz.html_under_When_and_what_do_we_use_your_data_for?) under "*When and what do we use your data for?*" (accessed on 23.09.2021).

35. As a result, a data transfer of the complainant's personal data from Acxiom to CRIF Bürgel for the purpose of CRIF Bürgel's assessment of the complainant's creditworthiness violates Article 5(1)(b) in conjunction with Article 6(4) of the GDPR. Article 6(4) DSGVO. The same applies to the transfer of personal data of other data subjects in similar situations.
36. Only if Acxiom had demonstrably been unaware in good faith of the processing by CRIF Bürgel for the purpose of the credit assessment, Acxiom has not violated the purpose limitation principle under Article 5(1)(b) GDPR. It is for Acxiom, as an accountable controller under Article 5(2), Article 24 and Article 31 GDPR, to prove this.

4.2.2. Infringement due to data collection and (further) processing by CRIF Bürgel (processing activity 2)

37. The following statements are based on the assumption that CRIF Bürgel is the sole controller within the meaning of Article 4(7) of the GDPR for the collection and (further) processing of personal data of the Complainant and other data subjects of Acxiom ("Processing Activity 2"). Should CRIF Bürgel be jointly responsible with Acxiom for this processing activity, the following also concerns Acxiom.

4.2.2.1. Systematic violation of the purpose limitation principle by operation of a mixed-purpose database

38. According to its own information, CRIF Bürgel maintains a mixed-purpose database. The information sheet provided in reply to the complainant's request for information concerning the credit inquiry procedure (Annex 8, point 2.1) states that:
- *"CRIF Bürgel GmbH processes personal data in order to provide authorised recipients with information for assessing the creditworthiness of natural persons and legal entities. For this purpose, score values are also calculated and transmitted."*
 - *"The data is also processed for fraud prevention, money laundering prevention, seriousness verification, identity and age verification, address determination, customer support as well as monitoring, direct marketing or risk management including KYC check as well as pricing or conditioning."*
 - *In addition to the aforementioned purposes, CRIF Bürgel GmbH also processes personal data for internal purposes (e.g. assertion of legal claims and defence in the event of legal disputes, general business management as well as optimisation of business processes as well as for the further development of services, products and scoring procedures, such as the use of machine learning, artificial intelligence and deep learning, ensuring IT security and IT operations.)*
39. CRIF Bürgel therefore makes no distinction as to whether a personal data item is collected and (further) processed for the purposes of direct marketing, for the purposes of assessing creditworthiness or for other purposes. Rather, all conceivable purposes are listed and not further limited. In particular, the purposes "*optimisation of business processes*" and "*further development of services*" are generic in nature and permit general storage and processing for all other purposes, no matter how abstract. As a result, this leads to an endless extension of the processing purposes of the data collected by CRIF Bürgel. Such an approach is

incompatible with the purpose limitation principle of Article 5(1)(b) GDPR, which requires "*specified, explicit and legitimate purposes*".

40. Insofar as CRIF Bürgel refers to the information sheet provided on request (Annex 8) for information on these purposes, it should be noted that the complainant would never have received this without his own intervention. Since the complainant had never been in contact with CRIF Bürgel beforehand and could not have known whether they were processing data about him at all, the complainant had no reason to consult CRIF Bürgel's privacy statement or the relevant information sheet. The complainant therefore never received the information in the context of an information *pursuant to Article 14 of the Regulation*, despite the title "*Information pursuant to Article 14 of the Regulation of CRIF Bürgel GmbH concerning the credit inquiry procedure*". This was exclusively communicated to him in the context of the response to his request for information pursuant to Article 15 of the GDPR. Without this request for information, the complainant would still not know that his data had been collected by CRIF Bürgel and (unlawfully) used for processing for a variety of purposes.
41. CRIF Bürgel's approach to the operation of a mixed-purpose database thus raises a large number of questions and problems which the complainant asks the supervisory authority(ies) to discuss:
 - 41.1. Deletion following unconditional objection to direct marketing: Does CRIF Bürgel store data on data subjects who have requested deletion under Article 17(2) in conjunction with Article 21(2) of the GDPR? Article 21(2) of the GDPR, still for credit assessment purposes? If so, how is it ensured that no further processing for direct marketing purposes takes place?
 - 41.2. Deletion following successful objection to credit assessment: Does CRIF Bürgel store data on data subjects who have successfully requested deletion under Article 17(2) in conjunction with Article 21(1) GDPR? Article 21(1) GDPR, still for direct marketing purposes? If so, how is it ensured that no further processing takes place for credit assessment purposes?
 - 41.3. Separation of genuine creditworthiness data ("negative data"): How does CRIF Bürgel ensure that data entered in the database on the basis of circumstances actually relevant to creditworthiness are not also processed for direct marketing purposes? Information from the "*Commercial Register, Debtors' Registers and Insolvency Notices*" (Annex 8, point 2.3), which also contain data such as name and date of birth, should be considered. The collection of data for direct marketing purposes from these sources, as well as a subsequent change of purpose to direct marketing purposes, would be a clear violation of Article 5(1)(b) of the GDPR and Article 6(4) of the GDPR (incompatibility of purposes).
 - 41.4. Information to data subjects at the time of collection: How does CRIF Bürgel inform data subjects of the collection of data from Acxiom pursuant to Article 14 GDPR? Is any information provided at all? If so, does this information only refer to the processing for direct marketing purposes or does it also inform about the processing for credit assessment purposes?
 - 41.5. Information to data subjects in case of change of purpose: If CRIF Bürgel collects personal data from Acxiom for direct marketing purposes only, how are data subjects informed of

the change of purpose to credit assessment purposes pursuant to Article 14(4) GDPR? Is any information provided at all? If so, how?

- 41.6. Privacy statement: The privacy statement of CRIF Bürgel (available at <https://www.crifbuergel.de/datenschutz/>) also leaves all these questions completely open, as it does not differentiate between categories of data and purposes of processing. Rather, as part of the related information sheet (Annex 8, point 2.1), CRIF Bürgel's processing operations are presented in a mixed and non-transparent manner on the basis of an unrelated and undifferentiated list of all purposes. CRIF Bürgel is thus already in breach of Article 5(1)(a) and Article 14 of the GDPR, even if this privacy statement were actually 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).
- 41.7. Data protection by design: In the light of the points just mentioned, to what extent does the purpose-mixed database operated by CRIF Bürgel take into account the obligation of data protection by design under Article 25(1) of the GDPR - in particular with regard to the effective implementation of the purpose limitation principle?
- 41.8. Handling of notifications pursuant to Article 19 GDPR: How does CRIF Bürgel deal with notifications by Acxiom that a data subject has requested Acxiom to rectify, erase or restrict processing? What are the consequences of the receipt of such a notification in relation to processing operations for credit assessment purposes of data collected from the relevant address publisher such as Acxiom?
- 41.9. "Robinson list" and objections to direct marketing: How does CRIF Bürgel deal with unconditional objections to direct marketing pursuant to Article 21(2) of the GDPR, as well as entries in the "Robinson list" of the DDV or IDI? In this context, Sections 3, 7 of the Unfair Competition Act provide that commercial actions in relation to advertising, although it is recognisable that the addressed market participant does not want this advertising, are inadmissible.
42. CRIF Bürgel seems to have completely disregarded all these issues when designing its database. CRIF Bürgel has not put in place any safeguards within the meaning of Article 6(4)(e) in conjunction with Art 24, 25 and 32 GDPR in order to protect the rights and freedoms of the complainant (or other data subjects). The violation of the purpose limitation principle by CRIF Bürgel is therefore already manifested in the present case by the de facto technical design of a purpose-mixed database and the systematic, large-scale data collection from address publishers such as Acxiom. This applies to the processing of personal data of the complainant, but also to the processing of personal data of other data subjects in CRIF Bürgel's database.
43. The complainant therefore suggests that the competent supervisory authority investigate these factual elements together with the issues raised in paragraphs 25 and 26 in particular by inspecting data processing operations at CRIF Bürgel's premises pursuant to Article 58(1)(a), (b), (e) and (f) GDPR in conjunction with §§ 40(5), 16(4) S.2 BDSG.
44. Depending on the specific data collection situation, the principle of purpose limitation is also violated, as explained below.

4.2.2.2. (Further) processing for the purpose of credit assessment is inadmissible

45. If CRIF Bürgel, has indeed collected the personal data of the complainant exclusively 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 creditworthiness of the complainant constitutes further processing. However, this further processing purpose is prohibited under Article 5(1)(b) in conjunction with. Article 6(4) of the GDPR, it is completely incompatible with the purpose for which the data were collected:
46. There is no close link between the purposes (Article 6(4)(a) GDPR). In this respect, in order to avoid repetition, reference can be made to the explanations given in points 31 to 31.4.
47. The context of the collection (Article 6(4)(b) of the GDPR) also speaks against the compatibility of the purposes. In order to avoid repetitions, reference can be made to the explanations in recitals 32 to 32.4
48. Also with regard to the relationship between the complainant as data subject and the controller (6(4)(b) GDPR), reference can be made to recital 33 according to which CRIF Bürgel collected his data from Acxiom and processed them for credit assessment purposes without his knowledge or intervention.
49. With regard to the possible consequences of further processing (Article 6(4)(d) GDPR), reference can be made to paragraphs 34. to 34.3. Processing for credit assessment purposes is much more intrusive than processing for direct marketing purposes. This has to be taken into account accordingly in the purpose compatibility assessment and also leads to unlawfulness under Article 6(1)(f) GDPR (see later paragraphs 61 to 64). It is thus completely disproportionate to collect data (allegedly) for direct marketing purposes but then immediately process them for credit assessment purposes.
50. As a result, further processing of the complainant's personal data collected by Acxiom by CRIF Bürgel for the purpose of assessing the complainant's creditworthiness violates Article 5(1)(b) in conjunction with Article 6(4) of the GDPR. Article 6(4) DSGVO. This also applies in general to all other personal data collected by CRIF Bürgel from address publishers such as Acxiom.

4.2.2.3. Collection for the purpose of assessing Acxiom's creditworthiness is inadmissible

51. If, on the other hand, CRIF Bürgel has already collected the complainant's personal data for the purpose of assessing Acxiom's creditworthiness, the breach of the purpose limitation principle manifests itself in a different way, but remains just as valid.
52. 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

³ Cf. *Frenzel* in Paal/Pauly (eds), *Datenschutzgrundverordnung Bundesdatenschutzgesetz (2018)* Art 5 DSGVO Rz 29.

Article 5(1)(b) in conjunction with Article 6(4) of the GDPR. Article 6(4) of the GDPR. Otherwise, an endless purpose opening along the processing chain would take place.

53. The complainant's data that are the subject of the complaint were collected and processed by Acxiom for third-party direct marketing purposes. If the collection and processing of this data by CRIF Bürgel (as a third party and subsequent further controller) now takes place for credit assessment purposes, this also constitutes further processing. The further processing purpose 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 set out in paragraphs 31 to 34.3, which are referred to in order to avoid repetition.

54. Furthermore, the legitimacy of the purpose of the collection on the part of CRIF Bürgel is already lacking. According to Article 5(1)(b) of the GDPR, personal data must be collected for specified, explicit and legitimate purposes. According to the opinion of the Article 29 Working Party of 02.04.2013, 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. " 4

55. 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 in default who has actually been dunned several times and does not dispute the correctness of the debt). The systematic collection of personal data without any reason

- (i) without a concrete reason in the individual case, but on stock,
- (ii) in an endlessly purpose-mixed database,
- (iii) without any information pursuant to Articles 13, 14 DSGVO,
- (iv) of consumers who have never experienced payment difficulties
- (v) with possible systematic disregard of § 31 BDSG

can never serve a legitimate purpose, however, since the specific purpose - the credit assessment of persons for whom not even "negative payment experience data" are available - can never be achieved without violating the law.

56. 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 considered legitimate, the collection of the complainant's data for credit assessment purposes

⁴ Article 29 Working Party, Opinion 03/2013 on purpose limitation (00569/13/EN WP 203), https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2013/wp203_en.pdf, p. 20.

was unlawful under Article 5(1)(b) of the GDPR. The same applies to personal data of other data subjects collected by CRIF Bürgel from address publishers such as Acxiom.

4.3. Unlawfulness of the processing operations of both respondents

4.3.1. Unlawfulness of the transfer of data from Acxiom to CRIF Bürgel (processing activity 1)

57. Irrespective of whether the supervisory authority assumes a breach of the purpose limitation principle by Acxiom or not, the transfer of data by Acxiom to CRIF Bürgel 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).
58. The only possible legal basis is therefore Article 6(1)(f) of the GDPR. Here, however, the balance of interests clearly tips in favour of safeguarding the fundamental rights and freedoms of the complainant:
- 58.1. The processing purpose of the creditworthiness assessment is extremely intrusive and may lead to the transmission of creditworthiness scores by CRIF Bürgel to its customers (as also happened, see recital 34.2.) and, in case of incorrect or inexplicably bad creditworthiness scores, also to a serious disadvantage of the complainant in commercial transactions. This applies not least because the processing by CRIF Bürgel 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 (see recital 34.3.). Even *if* the supervisory authority assumes a fundamental purpose compatibility within the meaning of Article 5(1)(b) in conjunction with Article 6(4) of the GDPR. Article 6(4) of the GDPR, the new processing purpose of creditworthiness assessment may therefore lead to massive disadvantages for the complainant in daily business transactions, which must be taken into account accordingly in the balancing of interests.
- 58.2. According to recital 47 of the GDPR, the reasonable expectations of a data subject must also be taken into account in the balancing of interests. The processing and transfer of address information to a credit reference agency for credit assessment purposes is completely surprising for a person such as the complainant, who has never experienced payment difficulties. Especially since he was not in any contractual relationship with Acxiom or CRIF Bürgel and since this was not published information of the complainant, but data from Acxiom's private stock. In this respect, the complainant was also never informed by Acxiom or CRIF Bürgel of any data collection or changes of purpose within the meaning of Article 14(1),(2),(4) of the GDPR (see in detail point 4.4.). He was thus not allowed to have any reasonable expectations of such data transfer and change of purpose.
59. As a result, a transfer of the complainant's personal data by Acxiom to CRIF Bürgel 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 generally applies to personal data of other data subjects that Acxiom has transferred to CRIF Bürgel in comparable scenarios.

4.3.2. Unlawfulness of data collection and (further) processing by CRIF Bürgel (processing activity 2)

60. According to its own information in its privacy statement (Annex 8, point 2.2), CRIF Bürgel bases the processing of personal data for credit assessment purposes on consent on the one hand and on legitimate interests under Article 6(1)(f) of the GDPR on the other:

"CRIF Bürgel GmbH processes personal data on the basis of the provisions of the General Data Protection Regulation. The processing is carried out on the basis of consents as well as on the basis of Art. 6 (1) (f) DS-GVO, insofar as the processing is necessary to safeguard the legitimate interests of the controller or a third party and the interests or fundamental rights and freedoms of the data subject, which require the protection of personal data, are not overridden. The legitimate interest is given in particular before entering into transactions with a financial risk of default. "

61. The complainant did not give his consent pursuant to Article 6(1)(a) of the GDPR in relation to the processing operations at issue, neither to CRIF Bürgel nor to Acxiom.

62. However, the processing of the complainant's data - or, more generally, the processing of data that CRIF Bürgel collects as a credit agency from an address publisher such as Acxiom - cannot be justified under Article 6(1)(f) of the GDPR either. In particular, the complainant has an overriding interest under Article 2(1) GG in conjunction with Article 1(1) GG. Article 1(1) of the Basic Law to determine himself/herself the collection and use of his/her personal data ("informational self-determination"). The balance of interests is in favour of the confidentiality interests and fundamental rights/freedoms of the complainant for the following reasons in particular:

62.1. The purpose of processing for credit assessment is highly intrusive - much more intrusive than the purpose of processing for direct marketing purposes. To avoid repetition, see points 34 to 34.3 and 58.1.

62.2. The circumstances of the processing in a mixed-purpose database, which are contrary to the GDPR, are blatantly to the detriment of CRIF Bürgel and, due to the lack of foreseeability of the purposes of the processing, clearly outweigh the complainant's interests in protection.

62.3. It should also be noted that CRIF Bürgel disguises data collection for direct marketing purposes, while the data is actually collected and (further) processed for credit assessment purposes.

62.4. As regards reasonable expectations of the complainant within the meaning of recitals 47, 50 of the GDPR, reference can be made to recitals 32 and 58.2

63. 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 Bürgel collected the data for direct marketing purposes and further processed them for credit assessment purposes, or whether it already collected the data for credit assessment purposes.

64. This is already clear from the decision of the Data Protection Conference (to which all German federal and state data protection authorities belong) of 11.06.2018. According to this, the

collection of positive data on private individuals by credit agencies cannot be based on legitimate interests (emphasis added):⁵

"In principle, 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 Article 6 (1) sentence 1 lit. f DS-GVO."

65. The decision, which was agreed among all German data protection authorities, thus denies an interpretation of the legitimate interest in favour of CRIF Bürgel to collect or receive non-payment-related data from an address publisher such as Acxiom. Therefore, the same decision refers to the requirement of consent for this:

"If a credit agency wishes to collect positive data on private individuals, this usually requires the effective consent of the data subjects within the meaning of Article 7 of the GDPR." (see footnote 4).

66. In the present case, however, the complainant never gave his consent. CRIF Bürgel's view that consent would not be necessary for business-like transmission is also not justifiable under the applicable data protection rules (Exhibit 10, page 1):

"Obtaining consent or assent is not required for businesslike data collection and storage for the purpose of transfer."

67. This view not only contradicts the resolution of the DSK, but would also undermine all data protection provisions, both nationally and under EU law. According to the wording, CRIF Bürgel seems to want to refer to Sections 28, 29 BDSG a.F., which, however, were already deleted without replacement in 2018 with the applicability of the GDPR. CRIF Bürgel's view that it does not require consent for the collection of data from Acxiom or comparable address publishers is therefore no longer justifiable.

68. Since no consent was ever obtained from the complainant, who had no knowledge whatsoever of the processing of his data by CRIF Bürgel, no other legal basis for the processing of data for creditworthiness purposes pursuant to Article 6(1) DSGVO is apparent in the present case.

69. As a result, (further) processing of the complainant's personal data collected by Acxiom for the purpose of assessing the complainant's creditworthiness cannot be justified under Article 6(1)(f) GDPR. In the absence of any other justification such as consent, the processing thus violates Article 6(1) DSGVO. This also generally applies to personal data of other data subjects collected by CRIF Bürgel in comparable scenarios from address publishers such as Acxiom.

⁵ DSK Decision, 11.06.2018, www.datenschutzkonferenz-online.de/media/dskb/20180611_dskb_verarbeitung_positivdaten.pdf

4.4. Breach of information obligations by both respondents to the complaint

4.4.1. Article 14(3)(a) of the GDPR sets a maximum time limit for the provision of information

70. In the present case, neither Acxiom nor CRIF Bürgel collected the data from the complainant itself. While Acxiom claims to have obtained the data from Media Information Systems Deutschland GmbH (Exhibit 5), CRIF Bürgel claims to have obtained them from Acxiom (Exhibits 7, 10 and 16). Pursuant to Article 14(1) of the GDPR, both respondents should therefore have informed the complainant about the collection of his data from Media Information Systems and Acxiom respectively.

71. Pursuant to Article 14(3)(a) of the GDPR, the statutory maximum period for providing information is one month after collection. This maximum period may be shortened, but not extended, according to Article 14(3)(b) and (c) GDPR. This understanding is followed - in addition to the prevailing doctrine⁶- also by the Article 29 Working Party, WP 260 rev.01, paragraph 27:

"The general time limit of one month under Article 14(3)(a) may also be shortened under Article 14(3)(c), which refers to a situation where the data are disclosed to another recipient (whether or not a third party). In this case, the information must be provided at the latest at the time of the first disclosure. In this scenario, if the disclosure takes place before the expiry of the one-month period, the information must be provided at the latest at the time of this first disclosure, notwithstanding the fact that less than one month has passed since the data was obtained. Comparable to the constellation of Article 14(3)(b), Article 14(3)(a) continues to apply if a disclosure of the personal data takes place later than one month after the personal data were obtained, meaning that the information under Article 14 must be provided to the data subject no later than one month after it was obtained. "

72. Any other interpretation of Article 14(3) of the GDPR would have absurd consequences and would be completely incompatible with the principle of transparency under Article 5(1)(a) of the GDPR, which is particularly evident in the case of data collection by a credit reference agency: Years may pass before a data subject whose data CRIF Bürgel has collected is disclosed to another recipient for the first time; such disclosure may never happen. This may be the case, for example, because the data subject does not have any commercial contact with customers of CRIF Bürgel, but only deals with companies that are customers of another credit reference agency, or because this person is generally not interested in taking out a loan, purchasing on account or other transactions that entail a credit check. Nevertheless, CRIF Bürgel would process the data over long periods of time without the data subject ever knowing about it.

4.4.2. The complainant was not informed in due time and with insufficient content

73. In the present case, CRIF Bürgel and Acxiom probably intended to disclose the complainant's data to third parties and actually did so: Acxiom disclosed to CRIF Bürgel, CRIF Bürgel to EOS KSI. Had these disclosures taken place before the expiry of the one-month period, CRIF Bürgel

⁶ Cf. *Bäcker* in Kühling/Buchner (eds.), DS-GVO - BDSG (2020) Art 14 DSGVO Rz 37.

and Acxiom would therefore also have had to inform the complainant before the expiry of the one-month period, in accordance with Article 14(3)(c) of the GDPR.

74. However, since the disclosures did not take place within one month of collection, CRIF Bürgel and Acxiom should have informed the complainant within the maximum time limit of one month after collection, in light of what is set out in paragraphs 71. and 72. respectively, pursuant to Article 14(3)(a) of the GDPR. This did not happen:

74.1. Acxiom claims to have stored the complainant's data for at least two years (Exhibit 5). However, the complainant has never received any information about this. If the information provided pursuant to Article 15 of the GDPR (Annexes 4 and 5) is considered to be a supplement to the information provided pursuant to Article 14 of the GDPR (which, according to the complainant, is not admissible; see recitals 76 and 77), the information was provided on 20 January 2021 - more than 27 months too late.⁷

74.2. According to its own information (Exhibits 7, 10 and 16), CRIF Bürgel has already held the complainant's data for at least two and a half years. If the information pursuant to Article 15 of the GDPR (Annexes 7, 10 and 16) is considered to be a supplement to the provision of information pursuant to Article 14 of the GDPR, the information was provided on 11.03.2021 - more than 29 months too late.

75. Even if further processing for other purposes is intended after the original collection of the data, Article 14(4) of the GDPR requires that the data subject be informed of this before further processing. Therefore, if it turns out that CRIF Bürgel originally collected the complainant's data for direct marketing purposes and that the complainant later decided to change the purpose to credit assessment purposes, CRIF Bürgel should have informed the complainant in accordance with Article 14(4) GDPR. This did not happen either.

76. However, Acxiom and CRIF Bürgel also failed to fulfil their information obligations as regards content, since the complainant did not receive any information at all from Acxiom and CRIF Bürgel. In particular, the response of both companies to the complainant's requests for information cannot be considered as information pursuant to Articles 13 and 14 of the GDPR. They referred to the complainant's request for information under Article 15 of the GDPR, which is to be strictly distinguished from Articles 13, 14 of the GDPR as independent proactive information obligations to be exercised. Without the complainant's own intervention, the complainant would still not have received the information, contrary to Articles 13, 14 GDPR.

77. The provision of information in response to a request for information under Article 15 GDPR can thus not be considered as a fulfilment of the information obligation under Article 14 GDPR - not even by reference to Article 14(5)(a) GDPR. If every breach of the information obligation were simply "curable" by providing information, the protective effect of Articles 13 and 14 GDPR would be completely undermined; the time limits in Article 14(3) GDPR would also be

⁷ In Exhibit 5 (attachment to Exhibit 4, which is dated 20.01.2021), Acxiom says it remembers data sources for only 2 years. CRIF Bürgel states in Exhibit 7 (dated 11.03.2021) that it has had data on the Complainant for "at least two and a half years" and that it has received them exclusively from Acxiom. Accordingly, Acxiom has also had the complainant's data for at least two and a half years, dating from 11.03.2021. The point in time at which Acxiom collected the data was therefore 11.09.2018 at the latest. Acxiom should therefore have provided the information pursuant to Article 14(3)(a) of the GDPR on 11.10.2018 at the latest.

invalid. A controller would have no reason whatsoever to comply with the information obligations under Articles 13 and 14 GDPR, but would actually be encouraged to ignore them:

- If a data subject has no knowledge or suspicion of data processing by a particular controller, he or she would not send a request for information to that controller and would never know about the data processing and the breach of the information obligation. There would be no risk for the controller to be prosecuted for an information breach.
- If, on the other hand, a data subject submits a request for information and the controller duly responds to it, he would automatically also have remedied the breach of the duty to inform that had occurred up to that point. Once again, there would be no risk for the controller to be prosecuted for a breach of the duty to inform.

That such a situation cannot be desired by the European legislator and would be incompatible with the principle of transparency and the principle of fair processing of data pursuant to Article 5(1)(a) of the GDPR requires no further explanation.

4.4.3. The respondents cannot rely on any exceptional circumstance

78. The exceptions to the obligation to provide information pursuant to Article 14(5) of the GDPR are narrowly defined and narrowly interpreted in order to protect data subjects. Accordingly, the information about a data collection that did not take place at the data subject can only be omitted if the data subject already has the information (Article 14(5)(a) GDPR), the information proves to be impossible (Article 14(5)(a) 1.(Article 14(5)(a), first case, GDPR) or would require a disproportionate effort (Article 14(5)(a), second case, GDPR), is not expressly provided for by law (Article 14(5)(c), GDPR) or is contrary to professional secrecy (Article 14(5)(d), GDPR).
79. The complainant was not informed about the collection, transmission or (further) processing of his data by Acxiom or CRIF Bürgel at the time. Until the reply to the complainant's request for information, the complainant did not have any information about the data processing. The complainant requested information under Article 15 of the GDPR precisely because no information had otherwise been provided to him. The exception of Article 14(5)(a) of the GDPR is therefore not relevant, since the complainant did not have any information at the time when the information should have been provided.
80. In this regard, it should be noted that the possible general accessibility of information under Article 14 GDPR in the form of an online privacy statement can also fulfil the information obligations under Article 14 GDPR. Such a privacy statement can fulfil the information obligation in the sense of a "layered approach" if the data subject is informed beforehand that his or her data have been collected and everything else can be read in the privacy statement. The mere existence of an information does not indicate to a data subject that this information is relevant to him or her. Even if the complainant had at some point accidentally strayed to e.g. www.crifbuergel.de/media/2106/informationsblatt-art-14-crif-buergel-gmbh.pdf, he would have had no idea whether CRIF Bürgel had actually collected data on him or not.
81. A further exception arises under Article 14(5)(b) GDPR if providing the information proves impossible or would require a disproportionate effort. However, Acxiom and CRIF Bürgel contacting the complainant would be neither impossible nor disproportionate. Given that both

Acxiom and CRIF Bürgel had just collected and processed the complainant's address data, both respondents already had all the data necessary to inform the complainant. Further investigation or research was therefore not necessary.

82. This applies equally to the costs of providing information. Acxiom and CRIF Bürgel generate revenue and profit from the trade with personal data of millions of data subjects in Germany. It would be a blatant contradiction of values and downright cynical to claim that a GDPR-compliant provision of information would be too "costly" and thus "disproportionate" for companies whose core business is data trading. Article 14 GDPR is precisely intended to ensure the protection of data subjects by creating transparency and may not be undermined by flat-rate cost calculations. Thus, the exception in Article 14(5)(b) GDPR is also not relevant.
83. The German legislator has made use of the opening clause in Article 14(5)(c) of the GDPR in Section 33 of the BDSG. According to Section 33(2) BDSG, non-public bodies are only exempt from the obligation to provide information if an information affects the prosecution of civil claims, the prevention of damage caused by criminal offences or the prevention of threats to public safety and order. However, Acxiom and CRIF Bürgel process the data for direct marketing or credit assessment purposes. These are in no way connected with the assertion of legal claims under civil law, the prevention of damage caused by criminal offences or other dangers to public safety and order. Due to the final regulation of § 33 BDSG, there is no further national exception.
84. A corresponding duty of confidentiality arising from a legally regulated professional secrecy pursuant to 14(5)(d) GDPR is also not apparent.
85. Even if a possible exception were to apply (which, according to the complainant, is not the case), Acxiom and CRIF Bürgel, as controllers, should have taken appropriate measures to protect the complainant's legitimate interests under Section 33 BDSG in conjunction with Article 14(2) DSGVO. Article 14(1), (2) DSGVO should have been taken. However, neither Acxiom nor CRIF Bürgel have taken such precautions. Rather, Acxiom and CRIF Bürgel shroud themselves in a veil of silence and provide information to data subjects such as the complainant only upon request.
86. As a result, Acxiom and CRIF Bürgel cannot rely on any exception under Article 14(5) of the GDPR or Section 33(1) of the BDSG and have breached their information obligations under Article 14 of the GDPR with respect to the complainant. This also generally applies to personal data of other data subjects collected by Acxiom and CRIF Bürgel in comparable scenarios.

4.5. Violations of § 31 BDSG by CRIF Bürgel

87. In Section 31 BDSG, the German legislator formulates additional requirements for the permissibility of credit scoring for the protection of commercial transactions. The applicability of Section 31 BDSG has repeatedly been questioned in the doctrine, as a corresponding opening clause in the GDPR is missing. The ⁸German legislator, on the other hand, ascribes a "paramount importance" to Section 31 BDSG in the draft law for the protection of economic transactions and data subjects. ⁹As long as there is no final decision of

⁸ Cf. for example *Ehmann*, in Simitis/Hornung/Spieker (eds.), *Datenschutzrecht* (2019) Annex 2 to Article 6 DSGVO Rz 17; *Buchner*, in Kühling/Buchner (eds.), *DSGVO - BDSG* (2020) § 31 BDSG Rz 4 f.

⁹ BR-Drs. 110/17, p. 101 f.

the ECJ on the (non-)applicability of Section 31 BDSG, the following statements apply in case of applicability:

88. Section 31(1) No. 1 BDSG generally requires compliance with the provisions of data protection law. As already shown in points 4.2, 4.3 and 4.4 both Acxiom and CRIF Bürgel are in breach of the purpose limitation principle, the lawfulness of data processing and their information obligations under the GDPR. In order to avoid repetitions, reference is made to the explanations in the corresponding points.
89. According to Section 31(1) No. 2 BDSG, the data used to calculate the probability value must be demonstrably relevant for this purpose. The extent to which information such as the name and place of residence of the complainant alone can result in a meaningful value about the complainant's creditworthiness is doubtful.
90. In this context, in particular § 31(1) no. 3 BDSG prohibits the use of address data exclusively for the calculation of corresponding probability values. In the present case, however, CRIF Bürgel only has the complainant's first name and surname and various (partly historical) addresses (Exhibit 7). CRIF Bürgel therefore appears to have calculated a creditworthiness score of 550 points on the basis of address data only. Pursuant to Article 5(2) of the GDPR, it is up to CRIF Bürgel as the controller to prove the contrary. If, on the other hand, other data were included in the score calculation ("*shopping basket value*" "*socio-demographic data*"), CRIF Bürgel did not provide information on them, contrary to Article 15(3) of the GDPR.
91. In the case of the use of address data, the data subject must be informed of the intended use of address data prior to the calculation of the probability score in accordance with § 31(1) no. 4 BDSG; the information must be documented accordingly. However, no such information was provided to the complainant, even though a score was demonstrably calculated for him and passed on to EOS KSI.
92. As a result, CRIF Bürgel has completely disregarded the provisions of Section 31 BDSG with regard to the processing of the complainant's personal data. This also applies in general to personal data of other data subjects processed by CRIF Bürgel in comparable scenarios.

4.6. Infringement of the right to restriction of data processing by CRIF Bürgel

93. According to CRIF Bürgel (Annex 10, page 1), the right to restriction only applies "*if the data in question are incorrect*". This statement is simply wrong - contesting the accuracy of the data is only one of four grounds for restriction in Article 18(1) GDPR. It seems highly dishonest and contrary to good faith within the meaning of Article 5(1)(a) GDPR for a company whose core business is the processing of personal data to communicate legal falsehoods to a person unfamiliar with the law regarding his or her data protection rights under Chapter III. GDPR. Instead of informing the complainant about his right to restriction under Article 18 of the GDPR in accordance with Article 15(1)(e) of the GDPR, CRIF Bürgel preferred to lie to the complainant in order to avoid further dealing with his request for restriction.

94. A restriction of data processing under Article 18 GDPR is in reality by no means limited to "inaccurate" data. According to Article 18(1)(b)-(d) GDPR, the processing of data must also then be restricted by the controller,
- if the underlying processing is unlawful but the data subject requests restriction instead of erasure (Article 18(1)(b) GDPR);
 - if the controller no longer needs the data for the purposes of processing but the data subject needs it for the establishment, exercise or defence of legal claims (Article 18 (1)(c) GDPR); or
 - where the data subject has lodged an objection under Article 21(1) of the GDPR and the controller is still examining his or her right to do so (Article 18(1)(c) of the GDPR)
95. The complainant's request for restriction is based precisely not on Article 18(1)(a) of the GDPR, but on Article 18(1)(b) and (d) of the GDPR. The inaccuracy of the data was never alleged by the complainant. The unlawfulness of the processing, on the other hand, is given (points 4.2 and 4.3) why a restriction pursuant to Article 18(1)(b) of the GDPR must be applied. The complainant has also repeatedly objected to the processing and disclosure of his data (Exhibits 6 and 9), so that a restriction must also be imposed pursuant to Article 18(1)(d) of the GDPR.
96. Since CRIF Bürgel has still not complied with the restriction request, it has violated the complainant's right to restriction of data processing under Article 18 GDPR.
97. The legal representation of the complainant has at least one further case in which CRIF Bürgel reacted to a request for restriction by a data subject with the assertion that this only existed "insofar as the data in question are false". Lying to data subjects in this respect seems to be systematic at CRIF Bürgel.

5. APPLICATIONS AND REQUESTS

5.1. Request for full investigation

The complainant requests the supervisory authority to fully investigate this complaint in accordance with the powers conferred on it under Article 58(1) of the GDPR. In addition to the issues already identified in paragraphs 25, 26 and 41.1 to 41.9, the following factual elements in particular need to be clarified:

Acxiom:

- (i) Did Acxiom transfer personal data of the complainant to CRIF Bürgel for direct marketing purposes of CRIF Bürgel or direct marketing purposes of third parties, where Acxiom knew or should have known that CRIF Bürgel was in fact (further) processing such data for credit assessment purposes?
- (ii) Did Acxiom transfer personal data of the complainant to CRIF Bürgel for credit assessment purposes?

CRIF Bürgel:

- (iii) Did CRIF Bürgel collect personal data of the complainant from Acxiom for its own direct marketing purposes or for the direct marketing purposes of third parties and then process them for credit assessment purposes?
- (iv) Does CRIF Bürgel generally collect personal data of natural persons for its own direct marketing purposes or for the direct marketing purposes of third parties from address publishers such as Acxiom and then process them further for credit assessment purposes?
- (v) Has CRIF Bürgel already collected personal data of the complainant for credit assessment purposes from Acxiom?
- (vi) Does CRIF Bürgel generally collect personal data of natural persons for credit assessment purposes from address publishers such as Acxiom?

5.2. Request for a declaration of infringement

The supervisory authority may, after having ascertained the data processing that has actually taken place, decide by decision as follows within the scope of its duties and powers pursuant to Articles 57, 58 of the GDPR:

Acxiom:

- (i) Acxiom has breached the purpose limitation principle under Article 5(1)(b) in conjunction with Article 6(4) of the GDPR. Article 6(4) of the GDPR by transferring personal data of the complainant to CRIF Bürgel, although Acxiom knew or should have known that CRIF Bürgel would (further) process these data for credit assessment purposes.

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Acxiom has breached the purpose limitation principle pursuant to Article 5(1)(b) in conjunction with Article 6(4) of the GDPR. Article 6(4) of the GDPR by transferring personal data of the complainant to CRIF Bürgel for credit assessment purposes.

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

CRIF Bürgel:

- (iii) CRIF Bürgel has breached 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 for direct marketing purposes and credit assessment purposes or to process them separately or for specific purposes.

- (iv) CRIF Bürgel has breached the purpose limitation principle pursuant to Article 5(1)(b) in conjunction with. Article 6(4) of the GDPR, in that CRIF Bürgel collected personal data of the complainant for direct marketing purposes from Acxiom and then further processed them for credit assessment purposes.

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CRIF Bürgel has breached the purpose limitation principle 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 at Acxiom.

- (v) CRIF Bürgel infringed Article 6(1) of the GDPR by collecting personal data of the complainant for direct marketing purposes from Acxiom without being able to rely on a justification under Article 6(1) of the GDPR and then further processing these data for credit assessment purposes.

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CRIF Bürgel infringed Article 6(1) of the GDPR by collecting and processing personal data of the complainant from Acxiom for credit assessment purposes without being able to rely on a justification under Article 6(1) of the GDPR.

5.3. Application to impose a processing ban

The complainant requests that CRIF Bürgel be prohibited by decision, pursuant to Article 58(2)(f) of the GDPR, from processing his personal data collected by CRIF Bürgel from Acxiom for credit assessment purposes.

The complainant requests the supervisory authority to prohibit by decision CRIF Bürgel's practice of collecting personal data from address publishers and processing them for credit assessment purposes, pursuant to Article 58(2)(f) of the GDPR.

At the same time, Acxiom shall be prohibited by notice from transmitting personal data to credit agencies pursuant to Article 58(2)(f) of the GDPR, if Acxiom knows or should know that they (further) process the data received for credit assessment purposes.

5.4. Request for the imposition of effective, proportionate and dissuasive financial penalties

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

- (i) the complainant is in all probability only one of possibly millions of affected persons in Germany,
 - a. whose data Acxiom has transferred to a credit reference agency in breach of Articles 5(1)(b), 6(1) and 6(4) DSGVO, and
 - b. whose data CRIF Bürgel has collected from an address publisher in breach of Articles 5(1)(b), 6(1) and 6(4) DSGVO and now (further) processes for credit assessment purposes (Article 83(2)(a) DSGVO);
- (ii) the infringement was manifestly systematic and intentional (Article 83(2)(b) GDPR);
- (iii) there is a high degree of responsibility: CRIF Bürgel carries out intrusive processing operations under Article 4(4) GDPR and possibly Article 22 GDPR, but has precisely not provided for technical and organisational measures within the meaning of Article 25 GDPR to comply with the data processing principles. Thus, the data collection and storage model in a purpose-mixed database is not only completely unsuitable to prevent data breaches, but even produces them continuously and inevitably (83(2)(d) GDPR);
- (iv) Both credit agencies such as CRIF Bürgel and address publishers such as Acxiom have been deriving immense financial benefits for years or decades from their cooperation in violation of data protection. CRIF Bürgel can only process and resell data on a large part of the stored data subjects because this data was acquired from an address publisher such

as Acxiom for an improper purpose and contrary to Article 6(1) of the GDPR (83(2)(k) of the GDPR).

6. OTHER

[REDACTED]

[REDACTED]