



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

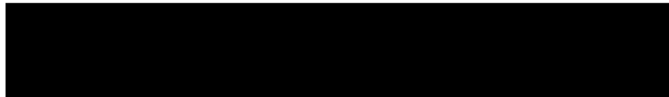
Austrian Data Protection Authority
Barichgasse 40-42
1030 Vienna

By e-mail: dsb@dsb.gv.at



noyb case number: C067

Complainant:



represented pursuant to
Article 80(1) GDPR by:

noyb - European Centre for Digital Rights
Goldschlagstr. 172/4/3/2, 1140 Vienna


Respondents:

1. **KSV1870 Information GmbH**
2. **Credit Protection Association of 1870**
3. **KSV1870 Holding AG**
all Wagenseilgasse 7, 1120 Vienna

I. COMPLAINT

due to Article 12(1), (2) and (3) GDPR in conjunction with Article 15 GDPR

II. DISPLAY

on the basis of Article 12(1), (2), (3) and (5) GDPR in conjunction with Article 15
GDPR, Article 5(1)(a) and (b) GDPR 



I. COMPLAINT

1. REPRESENTATION

1. *noyb* - European Centre for Digital Rights is a non-profit organisation active in the protection of the rights and freedoms of data subjects with regard to the protection of their personal data, with its registered office at Goldschlagstraße 172/4/2, 1140 Vienna, Austria and with registration number ZVR: 1354838270 (iWF: "*noyb*"). This may now be regarded as officially recognised, so that the statutes of the *noyb* association will not be presented for the time being.
2. The complainant is represented by *noyb* pursuant to Article 80(1) GDPR. The power of attorney was granted verbally and in writing and *noyb* refers to this power of attorney as a legal person authorised to represent parties professionally within the meaning of Article 80(1) GDPR in accordance with Section 10(1) last sentence AVG.
3. If the DPO has any doubts about the representation by *noyb*, a corresponding improvement order will be requested.

2. RESPONDENTS / RESPONSIBILITY UNDER DATA PROTECTION LAW

4. With reference to § 24(2) Z 2 DSG, this complaint is lodged against (1) KSV1870 Information GmbH (2) Kreditschutzverband von 1870 and (3) KSV1870 Holding AG:
 - KSV1870 Information GmbH is the contractual partner of the complainant with regard to the purchase contracts mentioned under point I.3.1. and has issued the reply to the complainant's request for information (point I.4.2.).
 - In the response to the complainant's request for information, the Kreditschutzverband von 1870 appears as the controller with regard to the complainant's data processed in the "KonsumentenKreditEvidenz".
 - According to the legal notice¹ and the privacy policy², KSV1870 Holding AG is the provider and controller of the website <https://www.ksv.at> (including subsites)³ with which the complainant has interacted and on which the products addressed in this complaint are offered for sale.
5. The complainant requests the DPO to determine ex officio who is ultimately responsible for the legal violations criticised in this complaint and whether the three respondents are individually or jointly responsible. The three respondents are collectively referred to as "KSV".

¹ <https://www.ksv.at/impressum-ksv1870-holding-ag>.

² <https://www.ksv.at/datenschutzerklaerung>.

³ Unless otherwise stated, all websites and links mentioned in this statement were last accessed on 23 November 2023.

3. FACTS OF THE CASE

3.1. KSV credit reports and GDPR information subject to a charge

6. KSV offers data subjects four fee-based options on the website <https://www.ksv.at/fuer-privatpersonen/ksv-auszug>⁴ to purchase their personal data in the form of so-called "InfoPasses". This is advertised with the words:

"If you need a KSV statement for presentation, order an InfoPass. This is not free of charge."

7. In contrast to the constant promotion of InfoPasses throughout KSV's website⁵, KSV has kept the option of requesting information in accordance with Article 15 GDPR well hidden:

8. If you search for terms such as "information KSV" "self-disclosure KSV" or "data copy KSV" or even "free self-disclosure KSV" on common search engines, the website mentioned is always in first place, while a reference to free information in accordance with Article 15 GDPR does not appear, or only appears late or in conjunction with third-party sites. This suggests that KSV has carried out search engine optimisation in order to direct data subjects specifically to its fee-based products (iwF: "InfoPass" or "InfoPasses").

9. The option to request information in accordance with Article 15 GDPR cannot be found directly in the menus on <https://www.ksv.at/> and the subpages either. The complainant ultimately found a small link at the bottom of the page in the footer under the heading "For private individuals" with the words "Art 15 GDPR", which leads to an online application form for information: <https://digitalerantrag.ksv.at/Dip/?product=auskunft-nach-art-15-dsgvo> (see also point I.4.2.). To get to this location, he also had to scroll over several advertising contents for the "InfoPasses".

10. On 27.07.2023, the complainant ordered all four of the <https://www.ksv.at/fuer-privatpersonen/ksv-auszug> for which he paid € 35.90 and € 45.90 per InfoPass respectively. (**Enclosure 1**, invoices and order confirmations for all InfoPasses).

11. KSV guaranteed delivery within two working days for the InfoPass "for applicants", "for tenants" and "for financiers" and within ten working days for the InfoPass "for authorities" (see **Enclosure 1**).

12. On the same day, the complainant then submitted a request for information pursuant to Article 15 GDPR to KSV using the aforementioned online application form (**Enclosure 2**, order confirmation information).

3.2. Receipt of the respective documents and their content

13. On the same day (27 July 2023), just a few hours later, KSV provided the complainant with -three of the four InfoPasses he -had requested by -email. Four days later (on 31 July

⁴ The URL sometimes used by KSV <https://www.ksv.at/fuer-privatpersonen/selbstauskunft> also leads to this website.

⁵ Also on the homepage <https://www.ksv.at/> the "InfoPass for Financiers" and the "InfoPass for Applicants" are also advertised.

2023), KSV also provided the complainant with the previously missing InfoPass for public authorities (**Annex 3**, -emails with download links to InfoPasses and InfoPasses as PDFs).

14. In contrast, the complainant only received the answer to his request for information pursuant to Article 15 GDPR on 22 August 2023, i.e. 26 or 22 days later than the InfoPasses (**enclosure 4**, -email with download link to the information and information as PDF).
15. If one compares the content of the four InfoPassports (**Annex 3**) with that of the information notice (**Annex 4**), it can be seen that the InfoPassports only contain data of the complainant that also appear in the information notice pursuant to Article 15 GDPR. The main difference between the InfoPassports and the information notice is that InfoPassports have a different visual design and only contain a copy of the data in accordance with Article 15(3) GDPR, but not information in accordance with Article 15(1) and (2) GDPR.
16. KSV therefore only provides a data copy within the meaning of Article 15(3) GDPR immediately when heavily advertised fee-based products are purchased and at the same time uses manipulative designs,⁶ which lead data subjects away from free requests for information in accordance with Article 15 GDPR.
17. To put it simply: KSV sells data to data subjects (such as the complainant) that they are legally entitled to receive.
18. As explained below, this system violates applicable data protection law on several levels; both with regard to the complainant and with regard to countless other data subjects in Austria (for the latter, see point II).

4. GROUNDS FOR COMPLAINT

4.1. Infringements

19. KSV has violated the following provisions and thereby infringed the complainant's rights:
 - a) Article 12(1) and (2) GDPR in conjunction with Article 15 GDPR: KSV has not taken any measures to provide the complainant with the information under Article 15 GDPR "*in a concise, transparent, intelligible and easily accessible form, using clear and plain language*" and to "*facilitate*" the exercise of the complainant's right to information. On the contrary: KSV is clearly endeavouring to push the sale of InfoPassports and to hide or withhold requests for information or even to misrepresent information in accordance with Article 15 GDPR as unsuitable for submission to third parties; this also applies to the complainant.
 - b) Article 12(3) GDPR in conjunction with Article 15 GDPR: The KSV does not provide information in accordance with Article 15 GDPR "*without undue delay*", although all technical and organisational possibilities for this obviously exist, as InfoPasses subject to a charge are provided within a few hours or days without any problems. The complainant also did not receive the information pursuant to Article 15 GDPR without undue delay.

⁶ This is discussed in detail in section I.4.2.

4.2. Violation of Article 12(1) and (2) GDPR ("*easily accessible*", facilitation requirement)

4.2.1. General information

20. KSV is obliged to handle data subjects' rights in accordance with the principles of Article 5(1) GDPR and to implement appropriate technical and organisational measures in accordance with Article 25(1) GDPR to ensure that the provisions of the GDPR are complied with. KSV does nothing of the sort, but operates a system of monetising fundamental rights that runs counter to the principles of the GDPR.
21. Pursuant to Article 12(1) GDPR, KSV is obliged to take appropriate measures to *provide* data subjects with all information and notifications pursuant to Articles 13 to 22 and 34 GDPR "in a *concise, transparent, intelligible and easily accessible form, using clear and plain language*".
22. According to Article 12(2) GDPR, the DPA must make it easier for data subjects to exercise their rights under Articles 15 to 22 GDPR - and not make them more complicated.
23. KSV is not complying with these legal requirements, but is deliberately ignoring them. KSV's entire web presence vis-à-vis data subjects is clearly aimed at enticing them to purchase the InfoPasses, which are subject to a charge, and to complicate the process of requesting information in accordance with Article 15 GDPR. To this end, KSV also uses manipulative designs and dishonest and false statements to data subjects:

4.2.2. KSV hides form for information in accordance with Article 15 GDPR

24. On the one hand, this can already be seen in the complicated searchability of the application form for information in accordance with Article 15 GDPR. As already explained in point 3.1., KSV has apparently successfully optimised its search engines in order to display hits for the InfoPassports even for search terms that are aimed at information in accordance with Article 15 GDPR.
25. Employees of *noyb* have tested this with different search terms, with different search engines (Google, Bing, Yahoo) in different browsers and on different end devices. The result was always the same: as soon as the word "information" is used in connection with "KSV", search results for the InfoPassports appear at the top, while search results for information in accordance with Article 15 GDPR do not appear, or only appear in connection with third-party sites.
26. In addition, the website <https://www.ksv.at> and its subpages also advertise the InfoPassports in many places, while the form for information in accordance with Article 15 GDPR appears hidden at the footer of the page (see **enclosure 5, screenshot of the website**). There, only the term "Art. 15 GDPR" is used, which a legal layperson (who does not know the GDPR provisions by heart) cannot understand without context, instead of using comprehensible everyday language such as "free information", "GDPR information", "self-disclosure", "your data stored at KSV" or similar:



Figure 1: End of page of www.ksv.at and subpages on computer screen

27. Searching for the form for information in accordance with Article 15 GDPR on a mobile phone is even more tedious, as the "for private individuals" section must first be opened:

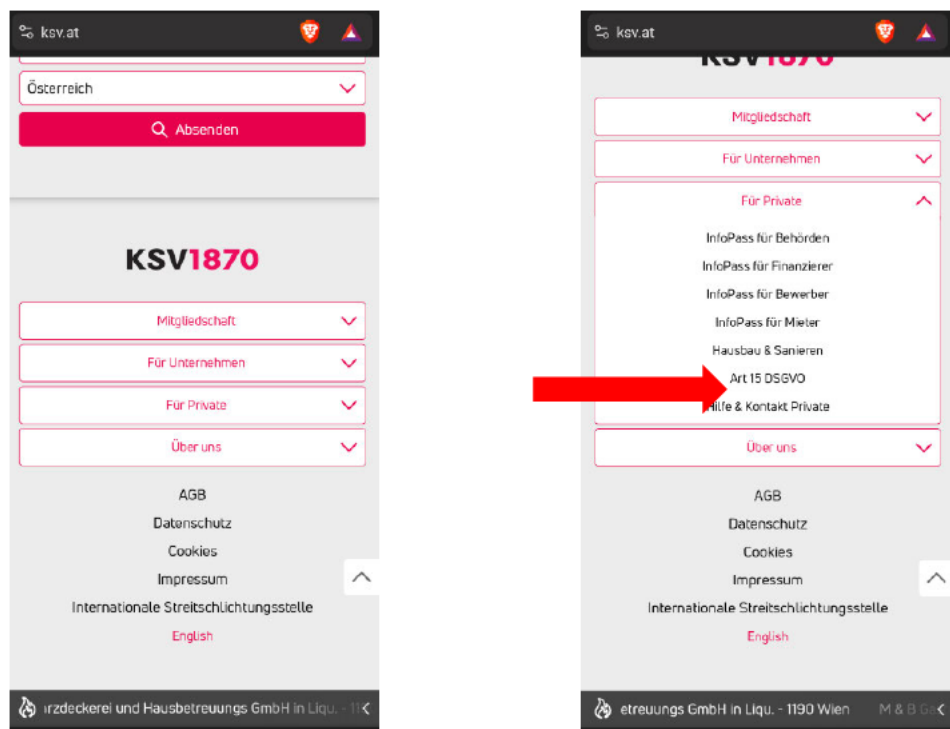


Figure 2: End of page of www.ksv.at and subpages on mobile phone display

4.2.3. KSV presents information in accordance with Article 15 GDPR as unsuitable for submission to third parties

28. Furthermore, KSV is clearly endeavouring to misrepresent the information in accordance with Article 15 GDPR as insufficient for submission to third parties, or KSV is even creating the impression for an average knowledgeable data subject that it would not be permitted to pass this information on to third parties:

29. Until mid-November, the following information was already available on the subpage with the online application form (<https://digitalerantrag.ksv.at/Dip/?product=auskunft-nach-art-15-dsgvo>):

"Not intended for submission to third parties":

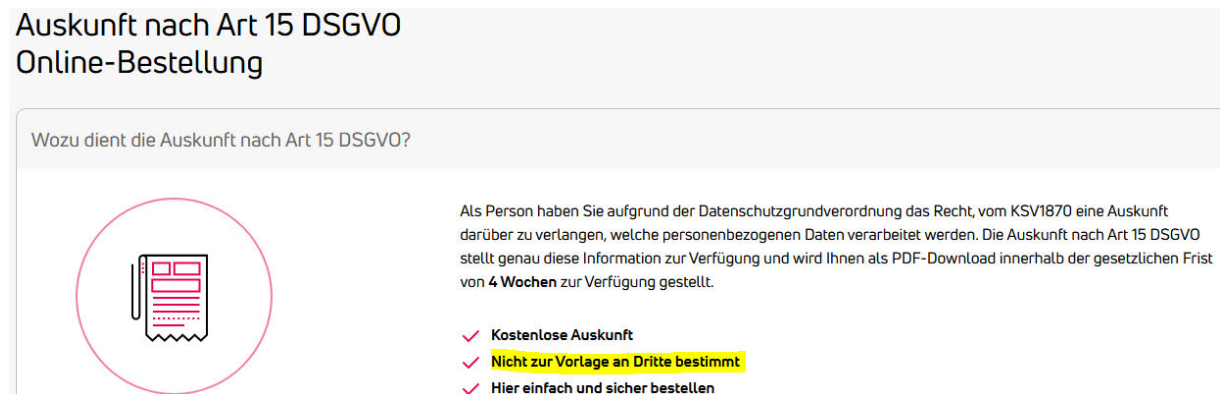


Figure 3: Screenshot of <https://digitalerantrag.ksv.at/Dip/?product=auskunft-nach-art-15-dsgvo> from October 2023

30. In the meantime (as far as can be seen around 21 November 2023), KSV has adapted this subsite to advertise the InfoPass for public authorities even more aggressively than before. Even people who have managed to find the page with the online application form are now confronted with intrusive advertising for the InfoPass for public authorities. KSV guarantees "EXPRESS delivery" within 3 working days:

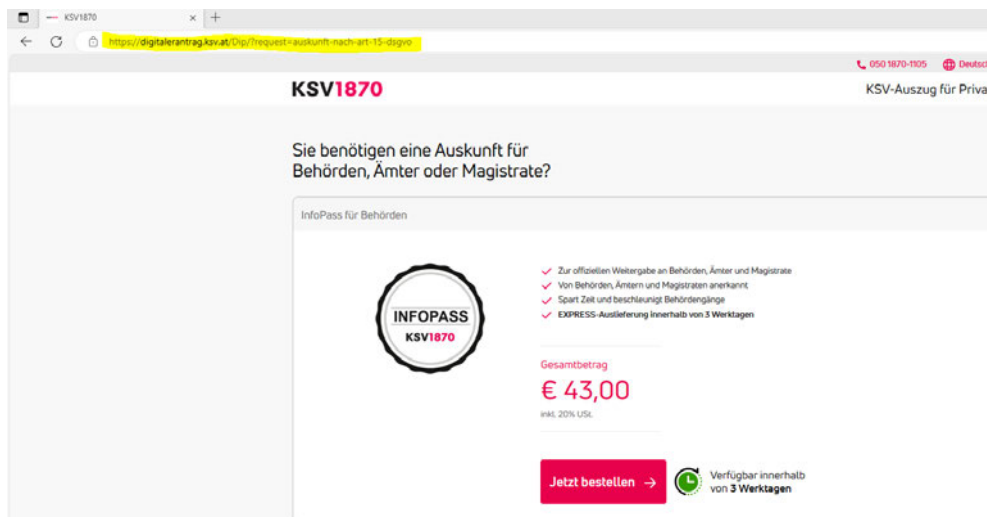


Figure 4: Screenshot from the top of the page of <https://digitalerantrag.ksv.at/Dip/?product=auskunft-nach-art-15-dsgvo> from 21/11/2023

31. Only when you scroll down this sub-page can you see information on information in accordance with Article 15 GDPR.⁷ KSV promises an average processing time of 25 to 30 days, meaning that data subjects are specifically informed that they must wait to exercise their

⁷ This is also the case when displayed on a mobile phone.

constitutionally protected right to information, while paying data subjects receive a copy of their data within three working days:

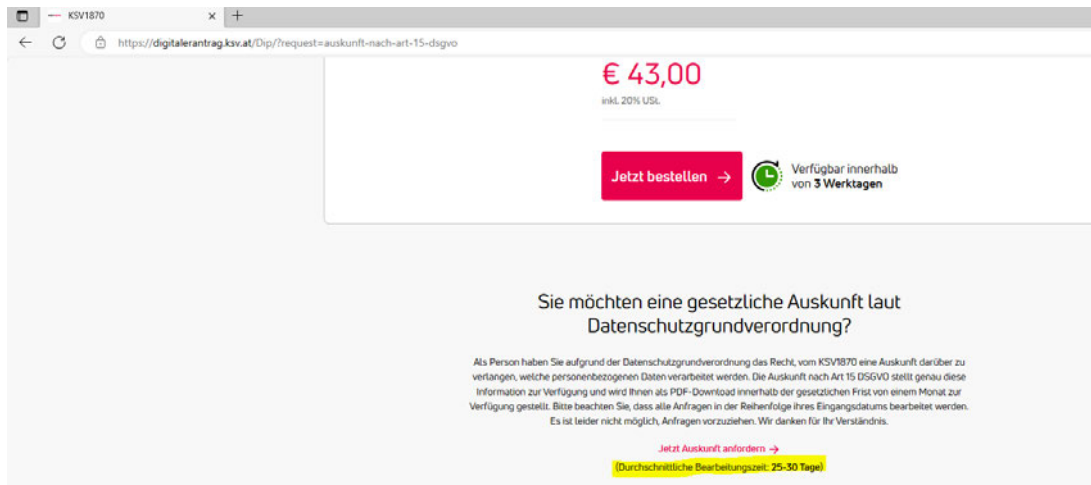


Figure 5: Screenshot from <https://digitalerantrag.ksv.at/Dip/?product=auskunft-nach-art-15-dsgvo> after scrolling down from 21/11/2023

32. A download of the entire subsite <https://digitalerantrag.ksv.at/Dip/?product=auskunft-nach-art-15-dsgvo> as at 21 November 2023 is also enclosed as **Annex 6**.
33. On the information itself, KSV blatantly advertises the InfoPass in order to entice people who have already received the information to buy it after all (**Enclosure 4**). On the cover page of the information leaflet is written in large letters:

"This information is not intended for submission to third parties."

34. The body text then reads:

"This information is not suitable for presentation to third parties, as all data stored by KSV1870 is listed here. If you need proof of creditworthiness that you can present to authorities, landlords, a future employer or as part of a financing enquiry, KSV1870 will be happy to support you with the relevant InfoPass."

35. With the exception of the cover page, each individual page of the information also contains the following footer:

"This information contains your personal data and is for your own information only."

36. This approach of the KSV seems particularly perfidious with regard to the InfoPass for authorities, as the ignorance of (usually non-German-speaking) residence applicants is deliberately exploited in order to sell them InfoPasses. The KSV adheres to this procedure, although the MA 35 also accepts KSV information in accordance with Article 15 GDPR as proof within the meaning of § 11(2) Z 4 NAG following a complaint by the Vienna City Court of Audit. See **Annex 7**, Report of the City Court of Audit, point 7; see point II.D. for more details.
37. Contrary to KSV's constant and deliberately untruthful claims, data subjects are of course permitted to pass on information concerning their person to whomever they wish in

accordance with Article 15 GDPR. This informational self-determination does not conflict with any rights of KSV or third parties.

38. Since the information pursuant to Article 15 GDPR must also contain all data that appears in the InfoPassports in accordance with Article 15(3) GDPR, the information pursuant to Article 15 GDPR would in any case also be perfectly suitable in terms of content to provide the desired proof (e.g. that no payment history data is available) to authorities, landlords, banks, potential employers or whomever.
39. As a result, KSV has therefore violated Article 12(1) and (2) GDPR vis-à-vis the complainant.

4.3. Violation of Article 12(3) GDPR ("*without undue delay*")

40. Article 12(3) GDPR also requires that complete information must be provided without undue delay in accordance with Article 15 GDPR. The addition "*in any case within one month of receipt of the request*" does not mean that a controller always has one month, which is also clarified by recital 59 sentence 3 GDPR ("*at the latest within one month*").
41. In other words: If, in the light of all the circumstances, it is possible for a controller to comply with a data subject's request more quickly than within one month, it is legally obliged to do so; a later provision of information is no longer "without undue delay", even if it takes place within the one-month period.⁸
42. It is evident that KSV is able to collect and provide the data processed on a person much faster than within one month: The provision of the info passes took between less than four hours⁹ and just over four days;¹⁰ see **Enclosure 3**.
43. Nevertheless, KSV needed a full 26 days to provide the information pursuant to Article 15 GDPR (**Annex 4**). Such a discrepancy is not compatible with Article 12(3) GDPR and shows that KSV provides a data subject with quick access to stored data in return for payment, but does not comply with the requirement of immediacy when requesting information in accordance with Article 15 GDPR.
44. Whether this time discrepancy in provision is intended to make the InfoPass more attractive than the information pursuant to Article 15 GDPR ("those who pay are given preferential treatment") is not conclusively recognisable for the complainant and is of particular importance in any administrative criminal proceedings [REDACTED]
[REDACTED] all appearances, however, this is precisely the case:
45. In the meantime (as far as can be seen around 21 November 2023), KSV has also adapted the website <https://www.ksv.at/fuer-privatpersonen/ksv-auszug> and guarantees delivery within 3 working days for all InfoPasses (which now cost € 43.00):

⁸ Cf. for example [Duisburg Labour Court 03.11.2023, 5 Ca 877/23](#) where the court deemed a negative disclosure on 5 June 2023 regarding a request for information dated 18 May 2023 as not immediate and awarded the person concerned € 750 in non-material damages.

⁹ InfoPass "for financiers": Purchase on 27/07/2021 at 11:12, provision on the same day at 15:56.

¹⁰ InfoPass "for authorities": Purchase on 27/07/2021 at 10:59, provision on 31/07/2023 at 17:20.

Icon	Target Group	Product	Purpose	Delivery Time	Delivery Method	Cost	Action
	Für MA35, Konsulat, Polizei	InfoPass für Behörden	Visum, Aufenthalt, Staatsbürgerschaft, Besuch aus dem Ausland	3 Werktage	per Mail (PDF-Download)	EUR 43,00 inkl. USt.	Hier bestellen
	Für Vermieter, Immobilienmakler	InfoPass für Mieter	Wohnung mieten	3 Werktage	per Mail (PDF-Download)	EUR 43,00 inkl. USt.	Hier bestellen
	Für Personalabteilung, Personalberater	InfoPass für Bewerber	Bewerbung, Jobsuche	3 Werktage	per Mail (PDF-Download)	EUR 43,00 inkl. USt.	Hier bestellen
	Für Bank, Finanzdienstleister	InfoPass für Finanzierer	Kredit, Leasing	3 Werktage	per Mail (PDF-Download)	EUR 53,00 inkl. USt.	Hier bestellen

Figure 6: Screenshot of <https://www.ksv.at/fuer-privatpersonen/ksv-auszug> from 21 November 2023

46. As already explained, a processing time of 25 to 30 working days is envisaged for requests for information under Article 15 GDPR; see **Figure 5** and **Annex 6**.
47. A download of the entire subsite <https://www.ksv.at/fuer-privatpersonen/ksv-auszug> as at 21 November 2023 is also enclosed as **Annex 8**.
48. In any case, it cannot be denied that the KSV would indeed be able to respond to requests for information under Article 15 GDPR without delay, but did not do so in relation to the complainant and therefore violated Article 12(3) GDPR.

5. APPEALS

5.1. Request for comprehensive investigation

49. In view of the above, the complainant requests the DPO to carry out a comprehensive investigation and to examine the KSV's system of providing information in general. To this end, the complainant requests an on-site inspection of the KSV's business premises and requests to be called in for this inspection.

5.2. Request for a declaratory judgement

50. The complainant requests that the complaint be upheld and that KSV1870 Information GmbH and/or Kreditschutzverband von 1870 and/or KSV1870 Holding AG be declared liable in relation to the complainant.

- (a) Article 12(1) GDPR in conjunction with Article 15 GDPR by not taking measures to provide the complainant with information within the meaning of Article 15 GDPR in a precise, transparent, comprehensible and easily accessible form in clear and simple language;
- (b) Article 12(2) GDPR in conjunction with Article 15 GDPR by not facilitating but rather complicating the exercise of the complainant's right to information;
- (c) Article 12(3) GDPR in conjunction with Article 15 GDPR by not responding immediately to the complainant's request for information dated 27 July 2023.

II DISPLAY

A) General information

51. In addition to the individual case dealt with in the above complaint, *noyb* would like to report the systematic violation of Articles 12(1), (2) and (3) GDPR in conjunction with Article 15(3) GDPR by KSV or its managing directors or other persons authorised to represent it externally.
52. To avoid repetition, reference can be made to the explanations in point I. In the light of the evident, intentional, commercial and enriching violations of the GDPR, *noyb* believes that the DPA has no discretion as to whether a fine is to be imposed, but only as to the amount of the fine [REDACTED]
53. In this context, *noyb* requests the DPOs to also investigate the circumstances set out below and to also penalise them or at least take them into account when choosing the appropriate remedial measures within the meaning of Article 58(2) GDPR and the assessment of penalties pursuant to Article 83(2) GDPR:

B) Disregarding the advice of the Vienna City Court of Audit

54. With regard to the InfoPass for public authorities, the KSV is ignoring clear indications from the Vienna City Court of Audit:
55. In a¹¹ report on Municipal Department 35 - Immigration and Citizenship Division (iwF: "MA 35") for the year 2021 published in December 2022, the latter reviewed the criticised circumstance according to which MA 35 would regularly only decide positively on applications for residence permits "*if (in accordance with the authority's mandate) the applicants purchased and presented KSV 1870 products*". (**enclosure 7**).
56. MA 35 then informed the City Court of Audit "*that the extracts from KSV 1870, which are available free of charge, would also be accepted*". Point 7.1. of the report states in detail (emphasis added):

"Both departments of MA 35 - Immigration and Citizenship informed us that extracts from KSV 1870, which are available free of charge, would also be accepted. Information from other creditor protection organisations could be used as proof as long as they contained all relevant information. This restriction was necessary because the credit liabilities also had to be quantified on the extracts, which was not the case with the extracts from all creditor protection organisations. MA 35 - Immigration and Citizenship stated that the applicants usually submitted the information from KSV 1870 on their own initiative for a fee.

It should be noted that on the website of MA 35 - Immigration and Citizenship there was a link to the KSV 1870 website in the list of documents required to complete the procedure. On this website, only fee-based products were listed under the category "self-disclosure". There was no indication on the MA

¹¹ According to its last page, the City Court of Auditors' report was issued in December 2022.

35 - Immigration and Citizenship website or on the KSV 1870 website that a free self-disclosure form could also be requested for submission to MA 35 - Immigration and Citizenship.

Recommendation: The StRH Vienna recommended to the MA 35 - Immigration and Citizenship to inform applicants about the possibility of submitting a free self-disclosure form.

Statement from MA 35 - Immigration and Citizenship: The recommendation will be implemented. A note will be added to the information provided by MA 35 - Immigration and Citizenship in the near future."

57. As far as can be seen, MA 35 has taken this recommendation into account and now refers to the "free self-disclosure" of KSV by placing a link at <https://digitalerantrag.ksv.at/Dip/?product=auskunft-nach-art-15-dsgvo>.¹²

58. Nevertheless, as explained in detail above (point I.4.2), KSV continues to advertise the InfoPass for public authorities with undiminished vigour as a document required for the MA 35 and uses a logo of the MA 35, the City of Vienna and the police (almost in an arrogant state function):



Figure 7: Screenshot of <https://www.ksv.at/fuer-privatpersonen/ksv-auszug> from October 2023



Figure 8: Screenshot of <https://www.ksv.at/fuer-privatpersonen/ksv-auszug> from 21 November 2023

59. As already explained in point I.4.2.2., in November 2023 the KSV also started to use a manipulative design even on the subpage that until then only included free information in accordance with Article 15 GDPR (<https://digitalerantrag.ksv.at/Dip/?product=auskunft-nach-art-15-dsgvo>), so that the changeover made by MA 35 is reduced to *absurdity*. Residence applicants who follow the link in question are once again exposed to aggressive advertising for the InfoPass for authorities (which has now also become more expensive and already costs € 43.00) and are thus deliberately deceived in order to enrich the KSV.

¹² See <https://www.wien.gv.at/amtshefner/dokumente/aufenthalt/drittstaaten/index.html>: In the respective linked residence scenarios there is always a sub-item "Required documents". If you open this, you will find the text "The Immigration and Citizenship Department (MA 35) accepts, for example, the free self-disclosure of the credit protection association - KSV 1870 Information GmbH". The link leads to the page <https://digitalerantrag.ksv.at/Dip/?product=auskunft-nach-art-15-dsgvo>.

60. In addition, KSV untruthfully describes the information pursuant to Article 15 GDPR as insufficient for submission to third parties at every opportunity (see point I.4.2.3.).
61. It is important to bear in mind that people with little or no knowledge of German are particularly likely to apply for residence permits. They are deliberately misled by the KSV's online presence and the false information on the information sheet in order to entice them to buy the InfoPass "for authorities".
62. KSV even provides explanatory videos on the purchase of InfoPasses in Turkish, Bosnian-Serbian-Croatian and English at <https://www.ksv.at/fuer-privatpersonen/ksv-auszug>, thus targeting its offer at non-German-speaking residence applicants. The videos again claim that you have to order an "InfoPass". In the case of such persons coming from non-EEA countries, it can be practically ruled out that they are aware that the right to information under Article 15 GDPR is free and immediate. Despite the obligations under Article 12(1) GDPR to provide transparent, comprehensible and easily accessible information, information on the free right of access under Article 15 GDPR is only available in German.
63. In light of the fact that the MA 35 also accepts information in accordance with Article 15 GDPR, there is no reasonable reason for these people to buy an InfoPass for authorities for a fee. In this respect, the KSV exploits the vulnerability of residence applicants (ignorance, foreign language, foreign authority, fear of deportation) with shameless intent to enrich themselves. The fact that the MA 35 states *"that the applicants usually submitted the information from KSV 1870 on their own initiative for a fee"* shows that the KSV's sales strategy is successful and that residence applicants were and probably still are regularly successfully deceived.

C) Systematic violation of the principle of freedom from costs

64. According to Article 12(5) GDPR, a controller must provide "communications and measures" in accordance with Articles 15 to 22 and Article 34 GDPR free of charge. A reasonable fee may only be charged for manifestly unfounded or excessive requests.
65. Article 15(3) sentence 2 GDPR also emphasises that the data copy must be free of charge, only for further copies *"requested by the data subject, the controller may charge a reasonable fee based on administrative costs."*
66. Data subjects who purchase an InfoPass from KSV are not formally exercising their right to information in accordance with Article 15 GDPR. In fact, however, their aim is to obtain the personal data processed by KSV concerning them, i.e. a copy of the data within the meaning of Article 15(3) GDPR, in order to prove to third parties that no payment history data or outstanding loans of a problematic nature are stored about them. As explained above, MA 35 also accepts information in accordance with Article 15 GDPR as possible proof in accordance with Section 11(2) Z 4 and (5) NAG).
67. Without the targeted advertising measures and misinformation by KSV, data subjects would certainly submit requests for information to KSV far more frequently in accordance with Article 15 GDPR. *noyb* requests the DPO idZ to order KSV to disclose,
- a) how many InfoPasses KSV sells per year (broken down by type of InfoPass) and

- b) how many requests for information pursuant to Article 15 GDPR KSV receives per year.
68. Based on these figures, the DPO should be able to estimate how many data subjects buy InfoPasses from KSV each year, even though they actually want information in accordance with Article 15 GDPR.¹³
69. KSV systematically disregards the principle of free of charge for all these persons by deliberately creating the impression that only the InfoPassports, which are subject to a charge, represent suitable proof of one's creditworthiness vis-à-vis certain bodies (see already point I.4.2.3.). Although information in accordance with Article 15 GDPR would be sufficient, data subjects are pressurised into buying completely pointless products.
70. In addition, the data copy is obviously provided much faster for a fee than in the case of free information (see point I.4.3.). KSV thus systematically penalises data subjects who exercise their right to information compared to purchasers of InfoPasses.
71. *noyb* also asks the DSB idZ to find out how much turnover KSV generates annually through the sale of InfoPasses.
72. It should be borne in mind that until recently, MA 35 linked to the InfoPass for authorities on its website and thus provided the KSV with bona fide residence applicants as customers. According to the MA 35 performance report, more than 114,000 applications were received in the Immigration Department in 2022.¹⁴ With a net price (excluding VAT) of € 29.92 for the InfoPass for authorities, a six-, probably even seven-digit annual unlawful turnover amount can therefore be expected. Even if an InfoPass for public authorities was only purchased for half of these applications, KSV generated unlawful turnover of over € 1.7 million.¹⁵ Added to this are revenues for the other three InfoPasses (applicants, financiers and tenants) for which a fee is unlawfully charged for a service in accordance with Article 15 GDPR.

D) Inherent violation of data processing principles and invalidity under civil law

73. The system of vehemently promoting InfoPassports over information pursuant to Article 15 GDPR also contradicts the principle of good faith pursuant to Article 5(1)(a) GDPR. According to this, behaviour that abuses the behaviour of data subjects¹⁶ or exploits misconceptions is considered unfair (in the sense of contrary to good faith).¹⁷ The KSV abuses the ignorance and - at least with regard to the InfoPass for authorities - any lack of language skills of affected persons (residence applicants) in order to induce them to purchase InfoPasses. In addition, the

¹³ The DSB knows from proceedings D.124.1779/23 how many requests for information CRIF GmbH, KSV's largest competitor on the Austrian market, receives each year. The DSB can therefore check the credibility of the information provided by KSV.

¹⁴ <https://www.wien.gv.at/spezial/leistungsberichte/leistungsberichte-der-magistratsdienststellen/magistratsabteilung-35-einwanderung-und-staatsburgerschaft/>.

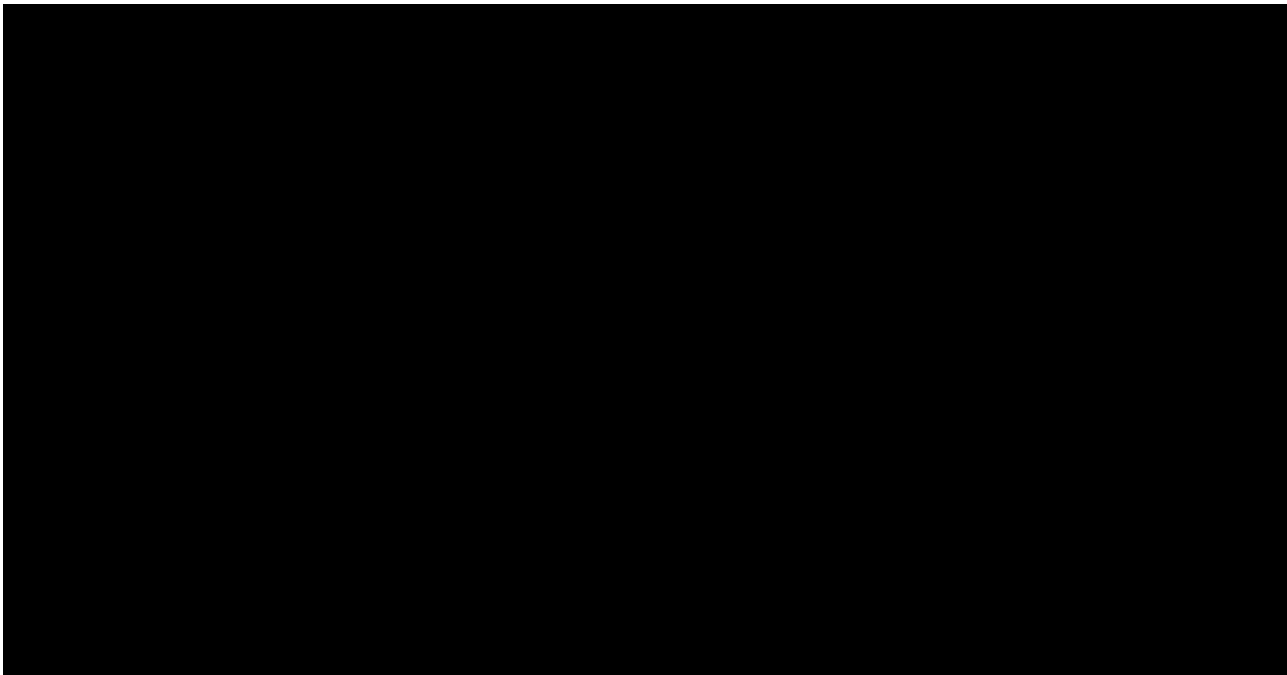
¹⁵ An exact estimate is not possible, as MA 35 only requires self-disclosure from the records of a creditor protection organisation for renewal applications, but not for initial applications, and there is no breakdown by type of application in the MA 35 performance report.

¹⁶ See *Rofnagel* in Simitis/Hornung/Spiecker gen. Döhmman (ed.), Data Protection Law (2019), Art 5 GDPR para. 47.

¹⁷ See *Schantz* in Wolff/Brink/v. Ungern-Sternberg (eds.), BeckOK Datenschutzrecht (45th edition, status 01.11.2021, beck-online.beck.de) Art 5 GDPR Rz 8 mWN.

KSV deliberately creates misconceptions among data subjects and exploits them through its advertising and the information provided in accordance with Article 15 GDPR (see point I.4.2.).

74. According to general life experience, it can be assumed that data subjects would not purchase InfoPasses without the corresponding advertising measures and misinformation by KSV. For the average data subject, there is no reasonable reason to pay for data that they have a fundamental right to receive immediately.
75. All data processing in connection with the purchase of InfoPasses (data collection in the order form, processing of the purchase contract, provision, etc.) is therefore regularly carried out contrary to Article 5(1)(a) GDPR, as it is initiated exclusively by unlawful behaviour on the part of KSV. As a result, such data processing also lacks a legitimate purpose within the meaning of Article 5(1)(b) GDPR.¹⁸
76. In addition, contracts for the provision of InfoPassports are probably invalid under civil law: Insofar as the violated data protection provisions are not regarded as legal prohibitions within the meaning of Section 879(1) 1st case ABGB, such contracts are immoral within the meaning of Section 879(1) 2nd case ABGB: After all, KSV, with the help of massive advertising efforts and misinformation, sells affected persons their own personal data, which they have a (fundamental) legal right to receive.¹⁹
77. As a result of this invalidity under civil law, data processing in connection with InfoPassports cannot be justified under Article 6(1)(b) GDPR.



¹⁸ On the concept of the "legitimacy" of the purpose, see Art. 29 Group WP 203, point III.1.3 (pages 19 and 20).

¹⁹ In addition to these absolute grounds for nullity, the relative ground for nullity of usury in accordance with Article 879(2)(4) ABGB is also likely to apply. The persons concerned who purchase InfoPassports are likely to be inexperienced (unaware that free data copying is possible and sufficient under Article 15 GDPR) or even in a predicament (in the case of applicants for residence who fear deportation) and the costs of the InfoPassports far exceed a "reasonable fee" within the meaning of Article 12(5) GDPR, which may only be demanded in exceptional cases.

