— Postal delivery certificate —
(Name)

Your contact person/-in

Direct line
Phone 0351/85471-
Fax 0351/85471-

e-mail
sdtb.sachsen.de*

File number
(please specify when answering)
2-3505/29/1

Dresden, 1/19/2024

Infringement of data subjects' rights
Reprimand
order to the controller to process personal data according to data protection law

The following orders are issued:

Reprimand and Order of compliance with the data subject's request

1. The SDPTC issues a reprimand, because you failed to delete the complainant's personal data on the due date and failed to inform him about the erasure on the due date or to inform him on the due date about the reasons to continue processing the data.

2. The SDPTC orders you to comply with the complainant's request of 27 November 2018 and 20 January 2019 to delete his personal data and to provide information on the measures you have taken to do so without delay after the service of this order, or, in case of the restoration of the suspensive effect within two weeks of the date of the non-contestability of this decision.

3. You are requested to provide details of compliance with paragraph 2 above to the SDPTC within two weeks of the service of this order, or, in case of the restoration of the suspensive effect of a legal remedy, within two weeks of the non-contestability of this decision by submitting a record

of the deletion of the complainant's personal data and a copy of the information given to the complainant, including proof of the complainant's receipt of this information,

4. With regard to paragraphs 2 and 3 above, the SDPTC orders the immediate execution of these orders.

5. In the event that you fail to comply with these obligations according to paragraph 2 above within a period of two weeks of the service of this order, or, in case of the restoration of the suspensive effect of a legal remedy, within two weeks of the non-contestability of this decision, I intend to impose a coercive penalty payment of 2.500 €.

6. In the event that you fail to comply completely or partially with the obligations according to paragraph 3 above for each information not given or not given completely I intend to impose a coercive penalty payment of 1.000 €.

7. Costs (fees and expenses) are not charged.

Grounds for the decision:

I.

(1) You operate the website www.[redacted] . The [redacted] was a network through which members of the club offered each other free overnight stays and assistance in their travels. To use the network it was necessary to register on the website with the first and last name, the postal address and a valid e-mail address. Members were able to communicate with each other via personalised accounts.

(2) The complainant requested you, the operator of this website, to delete his/her personal data (first and last name, birthday, address, registered address, photo) on 27 November 2018 and on 20 January 2019. He sent these requests by e-mail, in the absence of information about a data protection officer on the website, to http:/ and to *(deleted)*@ You did not answer this request for deletion and the personal data could be found at http:/ .

(3) The complainant then lodged a complaint with the polish data protection supervisory authority on 2 March 2019. With his letters of 26 June 2019 and 11 July 2019, The complainant contacted the Polish supervisory authority again and requested the deletion of his personal data and informed it, that they were still available at http:// . The case was referred to the SDPTC in her capacity as the lead supervisory authority with an Art. 56 GDPR-procedure (IMI-No. 124734)

(4) By letter dated 18 February 2021 with the ref.: 2-3505/29/1, the Saxon Data Protection and Transparency Commissioner informed you of the complaint of the complainant and gave you the opportunity to be heard. You did not respond to this letter. You were then obliged to provide information by means of a notice of mandatory participation dated 9 March 2022, served 10 March 2022. You have not provided this information.

(5) On 9 September 2022, the Saxon Data Protection and Transparency Commissioner found that it was no longer possible to view or access the website www

(6) By letter of 20 September 2022, you were informed of the infringement of the data subject's rights, i.e. that you did not to take action on the complainant's erasure request and failed to provide such information (hearing pursuant to § 28 I German Administrative Procedure Act – Verwaltungsverfahrensgesetz, VwVfG). You have been informed, that failure to take action on a erasure request constitutes an infringement of Art. 17 I GDPR.

You were also informed that not informing the complainant of the measures taken or not taken within a month after receipt of the deletion request infringes Art. 12 III GDPR. You have been informed that due to these violations of data protection law, to issue a formal reprimand was considered.
You have also been informed that a formal order is intended to comply with the complainant's request to delete his personal data and to provide information on the measures taken.
You have also been informed of the intention to issue a formal order requiring you to prove to the SDPTC compliance with the data subject's requests to exercise his or her rights pursuant to this Regulation.
You were informed that the imposition of a coercive penalty payment is intended if you do not comply with these orders.
You were given the opportunity to be heard on this subject until October 7, 2022. You did not respond.

II.

The Saxon Data Protection and Transparency Commissioner is the competent supervisory authority for the non-public area within the scope of the General Data Protection Regulation and the first two parts of the German Federal Data Protection Act (Bundesdatenschutzgesetz BDSG), Article 51 I of the General Data Protection Regulation (GDPR) in conjunction with Section 14 I Saxon Data Protection Implementation Act (Sächsisches Datenschutzdurchführungsgesetz-SächsDSDG) and § 40 I of the German Federal Data Protection Act (Bundesdatenschutzgesetz-BDSG) in conjunction with § 14 II SächsDSDG. As the operator of the website www.[redacted] you are the controller (Art. 4 No. 7 GDPR) and you are a non-public body (§ 2 IV BDSG), so the Saxon Data Protection and Transparency Commissioner is the competent supervisory authority.

The registration on the website www[redacted] using the first and last name, address and e-mail address, and the optional creation of a profile in the member account

using data, such as date of birth, photo, constitute the processing of personal data according to Art. 4 No. 2 GDPR. According to Art. 4 No. 2 GDPR, "processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

The collection and storage of the first and last name, address and e-mail address as part of the registration process on the website www [redacted] as well as other data that the data subject could optionally deposit in his member profile (such as photo, date of birth), constitutes processing in the sense of Art. 4 No. 2 GDPR. The data provided (first and last name, birthday, address, registered address, picture) by the complainant also constitute personal data within the meaning of Art. 4 No. 1 GDPR. "Personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person, Art. 4 No. 1 GDPR.

This opens up the material scope of the data protection regulations. Exceptions found in Article 2 II GDPR, which exclude the application of the GDPR, are not applicable on this case.

2. Pursuant to Article 17 I b GDPR, the data subject has the right to demand that personal data concerning him or her be erased without undue delay, and the controller is obliged to delete personal data without delay, provided that the data subject withdraws consent on which the processing is based according to Article 6 I a, or Article 9 II a GDPR, and where there is no other legal ground for the processing.

The processing of the personal data of the complainant for registering and creating a member account on the website www[redacted] (see point I.1.) was initially based on consent.

The complainant requested from you, as the operator of this website, to delete his personal data (first and last name, birthday, address, registered address, photo) on 27 November 2018 and on 20 January 2019. He sent these requests by e-mail to http://[redacted] and *(name)*@[redacted] This request for deletion constitutes a withdrawal of consent at the same time. This can be done informally. The term "withdrawal" does not have to be explicitly used in the request, since the withdrawal itself is included in the erasure request in the present case.

However, the controller does only have to delete the data without undue delay where there is no other legal ground for the processing after the withdrawal of consent. This is not the case here. You have not responded to these deletion requests and the personal data could still be found at http://[redacted] at least until 26 June 2019; so they were not deleted. Also, you did not respond to the letter of 18 February 2021 with the ref.: 2-3505/29/1 of the Saxon Data Protection and Transparency Commissioner informing you of the complainant's complaint, and did not inform us of another legal basis for further data processing (after the withdrawal of consent by the complaint).

You also did not provide any information according to the notice of mandatory participation of 9 March 2022, served on 10 March 2022, regarding the provision of information. You also did not respond in the hearing pursuant to § 28 I VwVfG by letter of 20 September 2022 concerning the infringement of data subjects' rights.

On 9 September 2022, the Saxon supervisory authority found that the website www[redacted] was no longer accessible. However, this does not mean that the data of the person concerned have been erased.

As the controller, since the withdrawal of consent (on 27 November 2018 and 20 January 2019), i.e. the erasure request of the complainant, and at least until 11 July 2019 (information from the data subject about his complaint to the Polish supervisory authority), you have processed the personal data of the complainant without a legal basis. Until then,

these data were available at http:/ [redacted] Against Art. 17 I, you did not delete them without undue delay. The deletion has to take place without undue delay, this means promptly. In this respect the period of Art. 12 IV GDPR (one month) is not applicable. However, the data were still available for at least a period of more than five months; so you did not delete them without undue delay

As a result, the personal data of the complainant were not deleted without undue delay, in any event, within a month after receipt of the request.

Art. 17 III GDPR does not forbid deletion in the present case.

According to this, the controller is not obliged to delete insofar as the processing is necessary to exercise the right to freedom of expression and information (Art. 17 III a GDPR); to comply with a legal obligation which requires processing by Union or Member State law legal obligation which requires processing to which the controller is subject, or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (Art. 17 III b GDPR); for reasons of public interest in the area of public health pursuant to Art. 9 II h, i and Article 9 III (Article 17 III c GDPR); d. for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89 I, in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing (art. 17 III d GDPR), or for the establishment, exercise or defence of legal claims (Article 17 III e GDPR).

You did not present the supervisory authority with facts to conclude, that this case might be covered by of one of the execptions of 17 III GDPR in the hearing. We therefore assume, that in this case there is no exception under Article 17 III of the GDPR.

Consequently, you were obliged to delete the personal data of the complainant without undue delay according to Art. 17 I GDPR.

It must therefore be concluded that you had an obligation to immediately erase the complainant's personal data and failed to comply with that obligation. Thus, you have violated Art. 17 I GDPR.

3. The admissibility of the processing of personal data requires a legal basis, otherwise the controller infringes the principle of the lawfulness of data processing pursuant to Art. 5 I a GDPR. After the complainant withdrew his consent, you have processed his personal data without a legal basis (see point 2)
In doing so, you have violated the principle of lawfulness of data processing pursuant to Art. 5 I a GDPR.

In accordance with recital 39 of the GDPR, the principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language is used. That principle concerns, in particular, information of the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of their personal data which are being processed.
By not complying with the erasure request (see point 2 above) and not informing the data subject (see point 4 below), you have left the data subject in the dark about further data processing, contrary to Article 5 I a GDPR, and thus did not assure the transparency of the processing.

4. The controller shall provide information on action taken on a request under Art. 15 to Art. 22 to the data subject without undue delay and in any event within one month of receipt of the request, Art. 12 III 1 GDPR.
That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay, Art. 12 III 3 GDPR.
You, the controller,have not informed the complainant immediately or within one month of receipt of his erasure request on actions taken, for example about the deletion. You also did not notify the complainant within one month of receipt of the request for erasure of reasons to deny erasure according to Article 17 III GDPR.

Nor did you inform him, within one month of receipt of the erasure request, of an extension of the information period according to Art. 12 III 2 GDPR, including the reasons for the delay.
Thus, you have violated your obligations under Art. 12 III GDPR.

5. The supervisory authority's task is to monitor and enforce the application of the provisions of data protection law (Art. 57 I a GDPR, § 40 I BDSG). This includes, in particular, Art. 5, 17 and 12 GDPR (lawfulness of the processing of personal data; erasure of personal data and information regarding the exercise of data subject's rights). In addition to investigative powers, the Saxon Data Protection and Transparency Commissioner also has corrective powers. Pursuant to Article 58 II GDPR, the supervisory authority has administrative discretion whether to exercise its supervisory powers and how to exercise them. Pursuant to Article 58 II GDPR, it may exercise its corrective powers if it has found or at least expects a breach of data protection regulations. In such cases, the authority has discretion concerning the legal consequences. In its exercise, it must, in particular, adhere to the principle of proportionality. In the case of proven infringements, the supervisory authority is usually obliged to take action against them with the aim of putting an end to the data protection breach. With regard to the discretion whether to exercise its supervisory powers, this discretion is intended to be narrowed down by the lawmaker, if, as in the present case, there is a (grave) infringement. With regard to the discretion how to exercise these supervisory powers, in choosing the appropriate corrective power under Art. 58 II GDPR, the principle of proportionality must be adhered to and, in this respect, also the intensity of the intervention ordered must be taken into account.

5.1 Pursuant to Art. 58 II b GDPR, the supervisory authority can issue reprimands to a controller or a processor where processing operations have infringed provisions of the GDPR. The reprimands are intended to show the controller that the processing does not comply with the provisions of the GDPR. According to the wording of the provision, a reprimand can be imposed not only instead of, but also in addition to a fine, Art. 58 II GDPR The reprimand formally disapproves of the action (or inaction) of the controller,

which can also be taken into account in a procedure to impose a fine pursuant to Article 83 II i GDPR.

You have violated Art. 17 I GDPR (see point II. 2.), Art. 5 I a GDPR (see point II.3.) and Art. 12 III GDPR (see point II.4.).

In the event of a breach of data protection law, it is at the discretion of the supervisory authority whether to issue a reprimand. The reprimand issued under paragraph 1 of this order corresponds to the infringements referred to in point II. 2 to II.4 as a correct exercise of administrative discretion.

The reprimand in paragraph 1 gives due regard to the principle of proportionality. The reprimand is also able to induce the controller to comply with data protection regulations in the future, in particular those protecting the rights of the data subject (Art. 57 I a GDPR).

It is also necessary because there are no equal means to achieve the goal. In particular, a warning pursuant to Art. 58 II a GDPR is not appropriate in the present case, since it is a preventive measure. In the present case, however, the controller has already violated the GDPR, so that a warning is no longer possible. From the point of view of the Saxon Data Protection and Transparency Commissioner, the reprimand is the mildest measure from the catalogue of Art. 58 II GDPR to show the controller the violations of the GDPR, in particular the infringement of the data subject's rights, and to persuade him to process personal data lawfully. In particular with regard to the repeated erasure requests by the data subject and several letters from the supervisory authority, to which the controller did not react except by closing the website, the Saxon Data Protection and Transparency Commissioner can assume that the reprimand will lead to the termination of these violations of the GDPR and will bring processing operations into compliance, in particular to respect the data subject's rights. The reprimand is therefore appropriate.

5.2 Art. 58 II c GDPR allows the supervisory authority to order the controller to comply with the data subject's requests to exercise his or her rights pursuant to this GDPR.

The order to comply with the request of the data subject (deletion of personal data and to inform him about it) fulfils the requirements of a correct exercise of administrative discretion. Deletion is the irrevocable removal of a reference to a person and of information,

that enables others to make the connection with a person. Stored electronic data must be destroyed completely and irrevocably. Physical data media (e.g. printouts) shall be destroyed by means appropriate to their nature and level of confidentiality.
The order enforces the application of the GDPR (Art. 57 I a GDPR), in particular of data subjects' rights. It is also necessary. Equally effective milder measures to achieve this objective are not available in this case. There are no investigative and corrective measures from the catalogue of Art. 58 II GDPR, which constitute a less invasive alternative, from the point of view of the controller, with which the goal of achieving data protection law compliance could be accomplished. A notice (Art. 58 I d GDPR) or a warning (Art. 58 II a GDPR) are not effective for achieving this goal in this case, in particular with regard to the opportunity to be heard (letter of 18 February 2021, the notice of mandatory participation of 9 March 2022, as well as the hearing by letter dated 20 September 2022) you did not use to state your view and which also did not make you fulfil your obligations as a controller in relation to data subjects' rights. Instead, you have only prevented access to the website without, however, providing information about the database or the deletion of data or informing the data subject about this.

5.3 The legal basis for authorising the submission of evidence is Art. 58 I a GDPR that allows any supervisory authority to order the controller to provide any information it requires for the performance of its tasks. The order allows the supervisory authority to effectively control its basic decision (paragraph 2 of the decision) to provide proof of the deletion of the complainant's personal data and to provide a copy of the information letter to the complainant, including proof of receipt of this letter by him .
Administrative discretion is exercised correctly by giving this order. Only these proofs enable the supervisory authority to effectively verify compliance with the order to delete the personal data and to inform the data subject. There is also no milder, equally effective measure in the catalogue of measures in Art. 58 I and II GDPR. As the controller, to deliver proof does not imply any disproportionate effort or is an infringement of your rights, in particular against the background, that the supervisory authorities have by law to control effectively the implementation of the data protection regulations (Art. 57 I a GDPR).

6 The order for immediate execution is based on § 80 II 1 No. 4 of the German Code of Administrative Court Procedure (Verwaltungsgerichtsordnung-VwGO). It states, that the suspensive effect fails to be applied in cases where immediate execution is specifically ordered in the public interest or in the overriding interest of a party concerned, by the authority which adopted the administrative act. This means that an objection or a judicial remedy against that order does not have suspensive effect.

The conditions laid down in § 80 II 1 No. 4 VwGO are met. There is a special "immediate execution interest" beyond the "interest in the decision", since the order for immediate execution is in the public interest. This is based on continuous violation of the data subject's rights in the form of the right to be forgotten and failure to inform the data subject immediately or at the latest within a month, as well as the continued unlawful processing of data and the resulting serious violation of the data subjects' right to informational self-determination (Art. 2 I, 1 I of the German Basic Law).

The data subject must be protected against the ongoing and present danger that you continue to process his or her personal data and therefore violate his interests and fundamental rights or freedoms. In particular, users of your website or the members of the [redacted] trust you to process their personal data in accordance with the applicable data protection regulations. This trust is build up by the supervisory authority, which has the task to monitor the compliance with data protection regulations, removes proven data maladministration and thus ensures lawful data processing.

Because of your lack of cooperation in the supervisory procedure and the ongoing refusal to comply with the data subject's requests exercising their rights, further violations against the General Data Protection Regulation or the continuation of unlawful data processing are to be expected without the order of immediate execution. Accordingly, there is imminent danger in delay. To be able to avoid compliance with data protection regulations for an indefinite period of time by appealing against a decision would be contrary to the legislative intention to further the public interest in an effective data protection supervisory authority. Any further delay - solely due to proceedings - entails a significant risk that unlawful processing and thus the violation of the personal rights of the persons concerned in the form of the right to informational self-determination will continue indefinitely.

It is therefore in a particular public interest not to wait for the non-contestability of the orders under point 2 of this administrative order and to continue to accept a breach of the General Data Protection Regulation. Otherwise, due to the suspensive effect of an objection, enforcement of the provisions of data protection and effective fundamental rights protection would simply no longer be fulfilled (see, in particular, Saxony Higher Administrative Court Bautzen, order of 17 July 2013, ref. 3 B 470/12, published under: www.juris.de).

The order for immediate execution also respects the rules for the exercise of administrative discretion (§ 40 of the German Administrative Procedure Act – Verwaltungsverfahrensgesetz, VwVfG)) In the balancing of the interest in immediate execution and your opposing interest in the suspensive effect of an objection or an appeal, as well as to be spared initially from enforcement measures, the enforcement interest (public interest) prevails. In the specific case, the order for immediate enforcement of the obligation contained in paragraph 2 of this decision shall exceptionally take precedence over waiting until its non-contestability.

7. In order to force you to fulfil your obligations under paragraphs 2 to 3 of the order, a penalty payment is threatened (§§ 2, 19 an 20 of the Saxonian Administrative Order Enforcement Act – Sächsisches Verwaltungsvollstreckungsgesetz für den Freistaat Sachsen, SächsVwVG) The threat of penalty payments is based on § 19 in conjunction with § 20 SächsVwVG. According to § 19 SächsVwVG, administrative acts which impose other acts, toleration or omission are enforced by enforcement measures.

The general conditions for enforcement laid down in § 2 SächsVwVG are fulfilled, since immediate execution was separately ordered for the orders in question pursuant to § 80 I Nr. 4 VwGO (enforcement order, § 2 No. 2 SächsVwVG). They are also enforceable administrative acts (§ 1 of the Saxon Administrative Procedure and Administrative Service Act, Gesetz zur Regelung des Verwaltungsverfahrens- und des Verwaltungszustellungsrechts für den Freistaat Sachsen – SächsVwVfZG) in conjunction with § 35 VwVfG.

The order threatening a penalty payment is issued in writing required by § 20 I 1 SächsVwVG and sets a reasonable time-limit (§ 20 I 2 SächsVwVG).

The administrative discretion ordering a threat of a penalty payments is correctly exercised. According to § 19 V SächsVwVG coercive means may be used repeatedly and until the order to be enforced has been completed or is not necessary anymore. In the present case, compliance with the order can only be effectively enforced by the threat of coercive means, in particular with regard to the lack of cooperation on your part in the previous administrative proceedings.

The Saxon Data Protection and Transparency Commissioner has made lawful use of its administrative discretion in selecting this measure. With regard to the chosen coercive measure, penalty payments should have the priority, The order threatening a penalty payment is suitable to urge you to comply with data protection regulations. The penalty payment is also the least invasive means of coercion from the catalogue of § 19 II SächsVwVG. Other equivalent means of coercion to establish the rule of law are not available (necessity, § 19 III SächsVwVG). In addition, the penalty payment is proportionate to the purpose of ending the unlawful conditions and to bring about lawful conditions, i.e. to verify compliance with the relevant orders by providing appropriate evidence (§ 19 IV SächsVwVG).

The amount of the penalty payment is determined by § 20 IV und § 22 I SächsVwVG. In doing so, the Saxon Data Protection and Transparency Commissioner has calculated the amount of penalty payments, reflecting, in particular, the seriousness of the infringement and the associated intervention into constitutionally protected legal positions of the persons concerned (right to informational self-determination, Art. 2 I, 1 I GG).

In the event of non-compliance with the order referred to in paragraph 2 of this decision, a coercive payment of EUR 2,500 is threatened. The continued processing of personal data of the data subject and the infringement of the data subject's rights (no deletion and no information of the data subject) justifies the amount of the penalty payment. The issue of this order is intended to make the controller respect the data subject's rights under the GDPR.

In contrast, the order giving evidence is of subordinate importance, which is reflected in the comparatively lesser amount of the penalty payment.

Overall, the threat of coercive payment is in accordance with the intention of the enforcement law to persuade the person responsible to comply with an order in the long run. The amount of the penalty payments threatened is likely to prompt you to fulfil your obligations.

Advice on legal remedies :

An action may be brought against that decision within one month of its notification. The action must be brought before the Administrative Court of Dresden (Verwaltungsgericht Dresden, Hans-Oster-Straße 4, 01099 Dresden) in written form or for the record of the clerk of the court.

Information :

1) The Saxon Data Protection and Transparency Commissioner is a supreme state authority in accordance with § 15 I SächsDSDG. This decision cannot therefore be reviewed in a preliminary administrative proceeding, but can only be appealed with an rescissory action brought before the Administrative Court of Dresden (§ 68 I VwGO) The administrative court of is locally competent (§ 20 III BDSG).

2) Appeals against measures of administrative enforcement have no suspensive effect and therefore do not release from the obligation to pay (§ 80 II 1 Nr. 4 VwGO in conjunction with § 11 I SächsVwVG). On request, the Dresden Adminstrative Court may restitute the suspensory effect of the action in whole or in part (§ 80 V VwGO).

3) After the deadline set in this order, the penalty payment may be fixed (§ 22 II SächsVwVG) if you have not complied with the orders listed under paragraph 2, 3 of this decision.

4) Pursuant to Paragraph 19 V of the SächsVwVG, the order threatening coercive means may be repeated, until you have fulfilled your obligations. The payment of a fixed penalty

payment does not terminate your obligation to comply with the orders. However, the coercive procedure is terminated as soon as you have complied with the orders under paragraph 2, 2 of this decision (§ 2 a I Nr. 1 SächsVwVG)

5) Violations of the obligation to provide information to the supervisory authority, Art. 58 I a GDPR, the order to comply with the request of the data subject (Art. 58 II c GDPR) may be punished as an administrative offence with a fine of up to EUR 20 000 000 (Art. 83 V e GDPR) irrespective of the enforcement of the penalty payment.

With kind regards
On behalf of the SDPTC

(name)
Desk Officer