

The control of compliance with obligations in the dissemination of commercial communications was initiated on the basis of 18 initiatives received by the Office. The messages were sent via e-mail messages and contained offers of financial loans and also encouraged visitors to visit websites designed to directly support the services offered. As part of the inspection, the audited person stated that he had ordered the mailings of the business communications in question from one marketing company, based on a contract for the organization of a marketing campaign. She further informed that she had contacted this company with a request for a description of obtaining consents for sending business communications, however, by the time the audit report was written, the audited person had not received any response from the said company. As part of the inspection, the Office also contacted the given marketing company, which received a statement from it, in which it stated that it cooperates commercially with the inspected person, but that it does not provide technical support or operate any e-mail mailings.

Regarding the mailings in question, she said that the marketing campaign was implemented through a foreign company, which she contacted and asked her not to send further mailings to the mentioned e-mail addresses (she entered them into the unsubscribe mode) and to comment on the individual addresses, directly to the respondents. During the inspection, however, no legal title (neither customer relationship nor consent) for sending commercial messages to the addressees in question was documented, neither by the inspected person, nor by the marketing company, nor by the sender (i.e. the foreign company) itself. Regarding the above, the Office states that in accordance with § 7 paragraph 4 of Act No. 480/2004 Coll., on certain information society services, commercial communications must contain information about the sender on whose behalf the communication takes place, or for whose benefit the commercial communication is disseminated. It is therefore assumed that the spreader can spread the commercial message not only himself, but also through another entity. Both the sender of commercial messages and the entity on whose behalf the commercial messages are sent are responsible for the dissemination of commercial messages. Thus, by ordering this service from another company, the controlled person does not absolve himself of responsibility, on the contrary, he must nevertheless be able to document the consents of the addressees of commercial communications or must be able to secure these consents through the company from which he ordered the sending of commercial communications. The company in question clearly did not live up to its obligations to which it undertook by signing the contract. However, it can be deduced from this the private liability of the company towards the audited person, who has the possibility to subsequently claim compensation for the damage caused by this procedure, in the form of recourse.

2 of Act No. 480/2004 Coll., as it did not prove that the addressees of commercial communications had given their consent to the sending of these communications. Furthermore, in the case of all commercial communications, § 7 paragraph 4 letter b) of Act No. 480/2004 Coll., as the commercial communication did not contain information about the sender, on whose behalf the communication takes place. Respectively, this information was insufficient, as it contained only an incomplete name of the inspected person. However, the question of identifiability must be approached through the lens of objective criteria, as certain phrases, names, etc. may only be known locally or to a limited circle of people. At the same time, in addition to the correct designation, a contact address must also be provided, where requests to stop sending business communications can be sent. It is therefore not fair to demand that the addressees of commercial communications make a complex search for the identity and contact details of the person who sent them the commercial communications. The inspected person objected to the inspection findings. The President of the Office rejected all the objections submitted by the inspected person. For this action, the Office imposed a fine of CZK 30,000 on the inspected person, while the fact that, in the case of 2 e-mail addresses, business messages were sent multiple times and the fact that the accused committed more offenses. As a mitigating factor, the administrative body evaluated the fact that the accused was not the actual sender of the commercial messages in question, and she too could have suffered damage to her reputation and name.

Recommendation:

The Office refers to the issue in question, which concerns the ordering of mailings of commercial communications from third parties, to its own report here.

ContextLocation: Document folders > Site map > Main menu > Supervisory and decision-making activities > Completed inspections > Inspections for 2019 > Unsolicited commercial communications - 2nd half-year > Business companyView current documents | document archive | documents including the archive