

The control of compliance with obligations in the dissemination of business communications was initiated on the basis of 17 initiatives received by the Office. The messages were sent both via e-mail and SMS messages and contained offers of goods and services from several online stores. These were primarily offers of financial services, but also offers of commemorative medals or offers of mobile tariffs. In three cases (for three commercial communications sent), the Office established that the inspected person was not the sender of the commercial communications in question, nor were they sent on his behalf. In the rest, it was established that their sender is the controlled person. In relation to these commercial communications, the audited person stated that they were not his customers or clients, but that they were contacts that he mediated to third parties. Users give their consent to sending commercial messages before sending a form or questionnaire when inquiring about products on their websites or the websites of partners who use "iframes" as part of their consent to the processing of personal data. It stated that users therefore had to actively check the box, without this consent the form could not be submitted and stored in their database. In this case, the purpose of the processing was to send general commercial messages, which represents the implementation of direct marketing, by all means, including electronic means of communication (e.g. e-mail or SMS). From the wording of the consent, as documented, it follows that this consent was granted to the controlled person to process the provided data (including e-mail address or telephone number) in an automated manner for an indefinite period of time for the purpose of later use to make available their marketing materials and other business communications, as well as its customers and other contractual partners, using the aforementioned electronic contacts as well. The authority stated during the inspection that the consent granted should be unequivocally demonstrable, i.e. it should be beyond doubt that it was actually granted by the person filling out the form and whose data is filled in (is the user of the specified contact data), it is necessary that after filling and sending such a form, a request for confirmation of consent is sent, and only by confirming this request (for example, by clicking on the provided link or sending a reply) is the consent actually granted. However, the forms used by the inspected person did not contain such confirmation. From a comparison of the audited person's statement, the complainants' claims and the finding that no confirmation of the consent granted was sent, it was evident that the audited person's consent to the sending of business communications was not clearly proven. The Office further dealt with the very wording of the granted consent in relation to the sending of commercial communications and in this context stated that the consent is not unequivocally clear for the benefit of which third parties the commercial communications will be sent. This consent thus did not

respect the requirements for specificity and sufficient information of the users, as it was conceived as a general consent to the sending of commercial communications to an indefinite range of third parties (these were defined in the documented wording of the consent only as customers of the controlled person and other contractual partners). Therefore, the controlled person did not have the legal title to send commercial messages, as the individual consents to sending commercial messages to the subject e-mail addresses and telephone numbers were not sufficiently proven by the controlled person, and the Office thus found a violation of § 7, paragraph 2 of Act No. 480/2004 Coll., on some information society services. In relation to other conditions that must be observed when sending commercial communications, the Office assessed that in the case of some commercial communications, the condition set out in § 7 paragraph 4 letter b) of Act No. 480/2004 Coll., as these messages did not contain information about the sender on whose behalf the communication is being made. The inspected person objected to the inspection findings. The Chairperson of the Office rejected all the objections submitted by the inspected person and stated that consent to sending commercial messages should be granted in advance and the disseminator must be able to prove it, while if he is unable to meet this burden, it must be established that it does not exist. She stated that this procedure does not deviate in any way from the current approaches of the Office, and from the point of view of achieving the necessary quality of consent, the highest possible level of information of users, or the user must be informed as specifically as possible. For this action, the Office imposed a fine of CZK 135,000 on the inspected person, while the fact that commercial messages were sent multiple times to some e-mail addresses or telephone numbers was taken into account as a fact that increases the seriousness of this action. Furthermore, the fact that an administrative proceeding was already conducted with this subject in the same matter was evaluated as an aggravating circumstance, and thus there is a repeated violation. The degree of harmfulness of the offense was also increased by the fact that, as far as the nature of the accused's activity is concerned, according to the administrative body, he is a professional in a field where personal data is extensively processed, which is evidenced by the large number of forms used for collecting personal data and subsequently contacting interested parties, whether already operating on the website of the accused, as well as on other websites of its partners, while these forms are from various areas (e.g. finance, insurance, mortgages, energy, mobile tariffs, inquiries, investments, etc.).

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