OFFICE FOR PERSONAL DATA PROTECTION

Lt. Col. Sochora 27, 170 00 Prague 7

tel .: 234 665 111, fax: 234 665 444

posta@uoou.cz, www.uoou.cz

* UOOUX00D84CM *

Ref. UOOU-01178 / 17-265

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29

and § 32 of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts, according to

§ 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, and according to § 10 paragraph 1

letter a) and § 12

paragraph 1 of Act No. 480/2004 Coll., on certain information society services and on change

certain laws, decided on 4 April 2019 pursuant to § 152 para. b) of the Administrative Procedure Code

thus:

Appeal filed by the accused, the company

against the decision of the Office for Personal Data Protection

Ref. UOOU-01178 / 17-257 of 30 November 2018, is rejected and the contested decision

is confirmed.

Justification

By decision no. UOOU-01178 / 17-257 of 30 November 2018 ('the decision') was

accused, society

(hereinafter referred to as the “accused”), found guilty of committing an offense pursuant to Section 11 (1)

letter a) point 1 of Act No. 480/2004 Coll., on certain information society services, which

should be committed by repeated dissemination of unsolicited commercial communications within the meaning of § 2 letter F)

Act No. 480/2004 Coll. electronic contacts specified in the statement, without

had a legal title to disseminate them. She was charged with the tortious activity described above

imposed a fine of 380,000 CZK.

The basis for initiating the proceedings was the inspection protocol ref. UOOU-01178 / 17-187 of February 12, 2018 acquired pursuant to Act No. 255/2012 Coll., On Inspection (Inspection Rules), inspector of the Office for Personal Data Protection Ing. Josef Vacula as part of the inspection performed on the accused from 11 April 2017 to 27 April 2018, including the file material collected as part of this inspection, as well as complaints from the addressees of the commercial communications delivered to the Office for Personal Data Protection (hereinafter referred to as the “Office”) by 23 May 2018.

The accused objected to the decision in due time. In this decay the lawyer of the accused expressed only that the conclusions of the administrative body in the decision disagrees and considers the decision unreviewable. On December 21, 2018 he was the Office sent a supplement supplementing the reason for the dissolution, together with the attached CD from the client database. Given that the data carrier sent was empty, the defendant's lawyer was he was asked to complete it by telephone, which took place on 14 January 2019.

The accused considers the decision to be illegal and therefore demands its annulment and suspension of the proceedings, or annulment and referral back to the administrative authority of first instance for further consideration. On support this view first of all, arguing that for serious deficiencies the reasons for the decision it considers absolutely unreviewable. The decision is intended to define the deed incomprehensibly and the reasons which led to the contested decision, nor should it be sufficiently defined, what evidence and other documents the administrative body of the first instance relied on, as well as the decision does not contain relevant arguments, including a description of administrative discretion.

The decision is also challenged on the question of the correctness of the legal assessment. She had some messages be sent to the clients of the accused on the basis of a concluded contract for the provision of services. Due to to the fact that the object of the accused's activity is the mediation of business demands and bids to third parties, the accused considers that these communications cannot be evaluated in the light of commercial communications pursuant to Act No. 480/2004 Coll., as it did not meet their definitions characters. The defendant described at this point the contractual relationship between her and her clients, stating that

it is a gratuitous relationship of a relatively informal nature, consisting in the provision of services
in the field of web presentation and contact mediation. Provision of services having
The nature of sending information by e-mail then cannot be according to the accused
considered as a commercial communication. In accepting the legal opinion of the administrative body of the first
degree would then, in the opinion of the accused, de facto terminate the contractual relationship, and thus
as well as to circumvent the provisions governing contractual obligations. As proof
client relationship, the accused then attached a compact disc (CD), on which the demands are stored
and other information to clients.
In the next point of decomposition, the legal conclusions concerning the consents to shipment are challenged
business communications. The accused is to have consent to the sending of commercial communications, which
was, in her view, sufficiently substantiated in the proceedings. She stated that she had provided exact dates and time
registration of users, including the IP addresses from which the registration took place, and consent was to be given
just during registration. Because consent can be given by any appropriate
in such a way, the requirements of the consent should be fully complied with. Condition of provability
consent is then outside the scope of any legal regulation and cannot be inferred in any other way.
In addition, the administrative body of the first instance should have inadmissibly determined the only possible one
in this way it is possible to prove consent. The decision does not even duly justify why the Office
Regulation (EU) 2016/679 of the European Parliament and of the Council (General Regulation
on the protection of personal data) when the Regulation was not even effective at the time it was granted. Then there are
This point of appeal calls into question possible ways of proving consent, which administrative
the first instance body mentioned in the decision as examples of good practice. The accused considers
examples as non-urgent and their application as illegal and therefore impossible. Finally accused
points to the good faith in the right of the other party to act in the present case
legal relationship. The request to reconfirm the consent should therefore be unjustified.
In the light of all the foregoing, the defendant concludes that the addressees of the communication were its clients,

and therefore the information sent to them fulfilled the service contract and, moreover, granted

consent to the sending of commercial communications by registration.

The accused also commented on the methods of unsubscribing from sending commercial messages. In that

In that regard, it stated, first, that it did not agree with the Office's findings that there was no withdrawal

direct and effective, as the check-out took place manually on the basis of a business response

communication and no administrative obstacles were imposed on it. Because the communication

was sent as part of the provision of services, unsubscribing from the mailing must be considered a notice

services and it should not be clear from the administrative file whether all the requirements for this have been met

legal proceedings. In some cases, the will of the addressee was insufficient

specifically, and were therefore sent a confirmation e-mail, giving them the opportunity to unsubscribe from all

or only from some services.

In the next part, the defendant argued that the administrative body of the first instance considered it tolerable

a deadline of eight days, but did not justify this in any way

and, in the defendant's view, the time limit is unreasonably short. In this context at the same time

finds the decision internally contradictory, as the first-instance administrative body respected it

eight days only in some cases and not in others. At the same time, it should not have been proper

demonstrated whether users actually sent the logout message, resp. whether this was

the accused was served and, moreover, points out the discrepancies between when the check-out from others should have

taken place

e-mail addresses and under a different name than the one registered by the accused, etc.

The accused also commented on

individual cases of sending commercial communications

in specificities. In particular, she stated that to send a business message to an email address

occurred within a tolerable period of check-out, but the Office still had this

unduly considered to be contrary to law. The Office was to proceed similarly in others

cases, such as address

In other cases, sending the accused points

on the violation of the principle in dubio pro reo, given the fact that some users

electronic addresses admitted that the clients were accused. Also for business communications

sent to

In the defendant's view, this was incomprehensible

conclusion when a message was sent to this address containing a confirmation of logout, as such

the message cannot meet the definition of a commercial message.

The accused is not even clear under which legislation the Office decided and why he applied the law

regulations in force after the time of sending unsolicited commercial communications. Decision

is to suffer from defects consisting in insufficient description of how the fulfillment took place

the factual nature of the offense, there is no clear link between the various cases of dispatch when

the negotiations have been completed and whether it is one or more acts.

In the very end, the amount of the fine is also challenged. In the opinion of the accused, the fine is set

disproportionate amount, the procedure of the administrative body of the first instance

is unreviewable

and the justification of the amount of the fine shows a number of serious defects. They had aggravating and mitigating

circumstances

be assessed chaotically and without due justification and infringements should also have taken place

prohibition on double attribution of the same circumstance to the accused, since the aggravating

they are already contained in fact. Attenuating circumstances should not be in the opinion either

the accused was assessed correctly, as the co - operation of the accused and the

efforts to remedy the defective condition. The Office did not even have to duly justify why

he does not find any mitigating circumstances. Finally, the question of whether she is accused by the processor

personal data, on the one hand, has not been proved in any way in the proceedings and, on the other hand, cannot be

affecting commercial communications has no effect. The administrative body of the first instance thus this fact

he could not consider it a circumstance increasing the danger and harmfulness of the offense. Similarly, it is not possible in the opinion of the accused, not to take into account the alleged notification by the Office of the problems associated with the dissemination of commercial communications, as these warnings are of no legal significance and have not even been proven in relation to it.

The appellate body reviewed the decision in its entirety, including the previous process its release, and reached the following conclusions.

In particular, it states that the issue of the proper definition of the act was addressed by the Enlarged Chamber Of the Supreme Administrative Court in the resolution of 15 January 2008, ref. 2 As 34 / 2006-73 (No. 1546/2008 Coll. NSS), where he stated, inter alia: “In a decision of a criminal nature, which are also decisions on other administrative offenses, it is necessary to state for sure what the specific action is affected by the subject - this can only be guaranteed by specifying the data containing the description the act by stating the place, time and manner of the commission, or by stating other facts, necessary to ensure that it cannot be confused with another. Such a level of detail is certainly necessary for the whole of the sanction proceedings, in particular to avoid the obstacle of lis pendens, double sanction for the same act, to eliminate the obstacle of the decided matter, to determine the scope of evidence and to ensure a proper right of defense. ”The purpose of defining the subject matter of the proceedings in the operative part the decision is thus to achieve its unmistakability. The operative part of the contested decision states that the accused was to repeatedly disseminate unsolicited commercial communications within the meaning of § 2 letter f) of the Act No. 480/2004 Coll., which are further individually specified by the date of dispatch and address electronic contact of the sender and the recipient, and thus acted without consent to their sending or without fulfilling the exception according to § 7 paragraph 3 of Act No. 480/2004 Coll., by which the accused should have violated the obligation stipulated in § 7 paragraph 2 of Act No. 480/2004 Coll., ie the obligation to use electronic contact details for the dissemination of commercial communications by electronic means funds only in relation to users who have given their prior consent. The deed is therefore

clearly and certainly when the statement of reasons for the decision is properly described as a legal complaint
conduct as well as the consequence of a breach of a legally protected interest, including
more detailed specifications. The Appellate Body therefore concludes that the opposition is unfounded,
for the deed cannot be confused with another.
In that regard, the defendant further stated that it was not clear from the decision how she had done so
fulfill the substance of the offense and it should not be clear under what regulations
the administrative authority of the first instance has ruled. To that end, the appellate body states that all
the legislation is duly identified in the decision, including the relevant paragraphs, whereby
in accordance with § 2 paragraph 1 of Act No. 250/2016 Coll., on liability for misdemeanors and proceedings against them, se
assesses liability for the offense in accordance with the law in force at the time the offense was committed,
ie the illegal dissemination of commercial communications. From the wording of § 11 par. 1 let. a) point 1 of the Act
No. 480/2004 Coll., as well as the context of the decision, it is clear that this is a collective offense
consisting of a multiple attack against a legally protected interest and shall apply in accordance with § 2
paragraph 4 of Act No. 250/2016 Coll. the law in force at the time of the last attack.
As regards the objection to the lack of clarification of the evidence and other evidence,
on which the administrative body of the first instance in the proceedings and the absence of evaluation of individual

as a result of which the accused can only consider which evidence he has taken administratively
authority, and which it does not, the appellate body does not consider to be appropriate. In the introduction
The statement of reasons for the contested decision states that the basis for initiating the administrative procedure
procedure was a protocol on control ref. UOOU-01178 / 17-187 taken as part of the inspection of the accused
pursuant to Act No. 255/2012 Coll., on Inspection (Inspection Rules), by the Inspector of the Office Ing. Joseph
Vacula, including the inspection file, and complaints filed with the Office by
delivery of the notice of initiation of the proceedings in question, ie by 23 May 2018. Thus generally
the defined documents are further supplemented, described and specified in the text of the justification
names and reference numbers. The statement of reasons further describes the defendant's conduct and its statement

and objections, which are dealt with logically and with the help of legal arguments, and analyzed
relevant legislation, which it then applies to each with reference to specific documents
individual complaint, resp. the case of sending an unsolicited commercial message.
In addition, it should be emphasized that the accused has repeatedly exercised his right to inspect the file (see official
records ref. UOOU-01178 / 17-212 and ref. UOOU-01178 / 17-256), when she made copies of the documents
and an oral hearing was held on 13 September 2018 in order to clarify some of them
questions, on the course of which a protocol was drawn up on the same day. UOOU-01178 / 17-253, whose
a copy was handed over to the accused. The accused thus apparently had to have an overview of all the actions
administrative authority of the first instance, taking into account the proper description of all documents
in the reasoning of the decision (see paragraph above) it cannot be found that it was a decision or
in the course of the proceedings in any way curtailed on their rights, and at the same time the appellate body
the previous paragraph summarizes that the administrative body of first instance applied the relevant legal
standards and decisions met all the requirements of the decision imposed on him by the provisions of § 68
Act No. 500/2004 Coll., Administrative Procedure Code.
The Appellate Body also considered the nature of commercial communications. In the opinion of the accused, she was
some communications are sent on the basis of a concluded contract covering forwarding services
information by e-mail. As follows from the definition of a commercial communication according to § 2 letter F)
Act No. 480/2004 Coll., it is any form of communication intended for direct or indirect
support of goods, services or the image of the entrepreneur. Act No. 480/2004 Coll. then in the provisions of § 7
regulates the procedure for disseminating those commercial communications which are sent electronically
form. It is thus possible to fully identify with the opinion of the administrative body of the first instance, according to which
the legal title on the basis of which commercial communications are disseminated is not part of the legal definitions
characteristics of the commercial communication, but only a follow-up condition that applies only as a condition
dissemination in cases where the trader decides to disseminate his communications meeting the definition of trade
communication by electronic means. At the same time, the defendant's objection that he would
the administrative authority of the first instance did not sufficiently substantiate the nature of the reports as commercial

communications.

The text of the decision clearly describes the definition of the commercial message, the content of individual messages, which were offers of intermediation of inquiries or offers of entering inquiries, offers of gifts (power bank, flash drive…), including links to portals operated by the sender (ie the accused), the ergo is so obvious that the messages sent are, by their nature, commercial communications, whereas the position of the accused as an entrepreneur clearly follows from § 420 et seq. of the law No. 89/2012 Coll., Civil Code. It is not even clear to the appellate body why the accused it currently challenges the nature of its messages when the messages themselves contained information that it is a commercial communication that was sent on the basis of registration or demand in one of the on-demand sites. The statement itself thus seems to be purposeful.

According to the decision, the administrative authority of the first instance considered the mailing to be in line with the conditions of § 7 paragraph 3 of Act No. 480/2004 Coll. in those cases where the accused sufficiently demonstrated a customer relationship, both in the form of registration and another way of closing contracts (eg entering a request). However, it must be emphasized that since the complainants they consistently stated that they did not agree with the mailing and at the same time never registered, or registration admitted, but proved the previous refusal, the burden of proof of the existence of legal The title to the dissemination of commercial communications lies with the accused. In keeping with the principle Euroconform interpretation of national law, resp. in this case compliance with the Directive 2002/58 / EC on the processing of personal data and the protection of privacy in the electronic communications sector communication, it must also be stated that consent to the sending of commercial communications must meet similar parameters as consent to the processing of personal data. This specifically follows both from recital 17 of the Directive and from the enacting terms in Article 2 (a). f) directives, according to which the "consent" of the user or subscriber corresponds to the consent of the data subject under Directive 95/46 / EC. The provisions of Section 5, Paragraph 4 of Act No. 101/2000 Coll. then provides: “Consent the controller must be able to prove the data subject with the processing of personal data in its entirety

processing time. ”Thus, one cannot agree with the accused's view that the condition of provability

consent is required without a legal basis. Similarly, the provisions of § 7 paragraph 3 of the Act

No. 480/2004 Coll. the sending of a commercial communication is conditional on the ability to sufficiently prove the origin

customer relationship in accordance with the rules for personal data protection, resp. by law

No. 101/2000 Coll. Reference to Regulation (EU) 2016/679 (General Data Protection Regulation)

can then be considered, as is clear from the decision and the context of the case, to be complementary “for

completeness ", as this also presupposes the provability of consent, and newer legislation is therefore not possible

find it more favorable for offenders.

Consent, then, not only must be provable, but it is, as the accused is right

in the dissolution, it also states, in particular by legal regulations, which, in addition to the basic ones

the requirements must also meet, in particular, the characteristics of freedom to grant and information.

By the very nature of the matter, the "consent" presented now, which was supposed to have been granted, is now accused

the act of registration itself, cannot be considered a valid legal title for the dissemination of commercial communications,

since the provision of services itself would thus be inadmissibly conditional on consent to shipment

spam, which precludes the freedom to grant it. Any other special consent

he was not proclaimed or proved by the accused by sending commercial communications. However, how

on the contrary, it also follows from individual documented commercial communications, not even the accused itself

it was not based on consent, but on the customer relationship, with regard to information

in the header of each individual commercial communication according to which the transmission was made on the basis of

the addressee of the entered request or the performed registration in the catalog, not the consent. Administrative

the first-instance body thus proceeded correctly in the proceedings, albeit in the absence of a freelancer, separately

granted and informed consent assessed the cases from the perspective of the provisions of § 7 para. 3

Act No. 480/2004 Coll.

The accused then proved the customer relationship by entering it in the database. However, this record contained

only information that is completely traceable on the Internet and with regard to the submitted IP addresses,

even those registration by the customer did not clearly prove it (it was often the same

IP addresses and it was not the identifier of the final addressee who had the alleged registration
The printscreen database itself then in a situation where complainants register or
they reject another act on which the accused bases the legitimacy of the dissemination of commercial communications
the accused consider them to be false, while the accused herself in very numerous cases in her own

contradicts claims about the way in which the proclaimed relationship arose, and at the same time in support
In many cases, it did not substantiate its claim with other specific evidence, ie e.g.
service order, invoice, specific request, e-mail confirmation, etc., can not be considered
sufficient evidence of the existence of the relationship. The fact that some of the addressees admitted that it was possible
however, they have registered with the accused in the past, but does not relieve the accused of the burden of proving
the existence of a legal title to it, and therefore even in this part the appeal cannot be found to be justified.
At the same time, the accused cannot be accused of being forced by the administrative body of the first instance
illegal conduct or took into account only the evidence specifically identified by him. First and foremost,
as is clear from the decision, the administrative body of the first instance respected in any way
sufficiently demonstrating the existence of a customer relationship. Secondly, the plea of illegality
Retention of the voice recording and the double opt-in method must be mentioned to the assembly
and further preservation of vocal expression does not necessarily take place solely with the consent,
but it may also be a matter of protecting the rights and legitimate interests of the person concerned. And as for the so-called
double
opt-in consent, this is a commonly used way of obtaining consent to shipping
commercial communications (or processing of personal data) significantly strengthening the authenticity of the actor
subject. Due to the fact that in such a case the user voluntarily indicates the contact
their contact details for the purpose of granting consent, and are therefore very specific
at the request of the user, the acknowledgment message is a requested message that does not meet the definition
business communication.
The alleged allegation that the administrative authority of the first instance was incorrect,

that withdrawal cannot be considered direct and effective, it must be stated that no such conclusion
it is not expressed in the decision. As for the refusal to send further business messages and thus
alleged circumvention of the provisions on contractual obligations, nor can the accused be charged on this point
truth. If the distribution of business messages is the result of registration, refusal to send others
The communication only affects the possibility of sending other commercial messages, but the effects are not possible
identify with the termination of the services as a whole.
The appellate body also dealt with the objection of the inadequacy of the eight-day transposition period
request to unsubscribe from further sending of commercial communications. Logging out was done manually,
and therefore the accused considers that the deadline should be in the order of weeks, not days. In that
In this context, it should be emphasized above all that commercial communications are by definition primarily
intended to support entrepreneurial activity, whereby
is due
to a possible severely harassing nature is linked solely to the will of the addressee and is therefore necessary
a refusal to respect as soon as possible. As is clear from the statement
the accused himself, the check-out was always made within about a week of receipt of the request
on cancellation (cf. statement accused at the oral hearing on 13 September 2018, recorded
in protocol no. UOOU-01178 / 17-253). At the same time from the file documentation, including itself
The decision is clear that the customer data were processed in an electronic database which
itself in principle allows for relatively easy searching, while changing parameter options
sending commercial communications, even by hand, cannot be considered disproportionate
a complex task that would not be possible in a matter of days. An eight-day period is possible
considered to be fully sufficient and proportionate to the circumstances of the case.
As to the provability of the refusal, the appellate body states, first of all, that e-mails are part of the file
messages sent in response to incoming commercial communications documented by individual complainants
delivery
their

as part of their complaints. Given that part of every commercial communication under § 7
paragraph 4 (a) c) of Act No. 480/2004 Coll. there must also be a valid address that allows direct
and effective unsubscription from further mailing, it can be reasonably assumed that the reports were against the accused
deliverable. At the hearing at the hearing on 13 September 2018, the accused herself stated that
during the period considered, the possibility of unsubscribing was allowed precisely and only in the form of a reply
to the received message. In addition, it should be noted that some of the complainants also documented others
communication with the accused who reacted in some way to this refusal message.
This argument,
by which the accused points out the alleged unprovableness of the refusal
commercial communications is thus considered irrelevant by the appellate body.
The appellate body then does not consider the objection of non-compliance with the eight-day deadline to be compelling
after rejection in the case of a commercial communication sent on 24 January 2017 to the address
electronic mail
The law clearly states that it is the duty of every disseminator
use electronic contact details for the purpose of disseminating commercial communications exclusively
based on consent or customer relationship. Any sending at a time when the addressee is already
unequivocally expressing the will that no further commercial communication is desired is from a formal point of view
contrary to the law and in fact fulfills the factual nature of the tort (if it is a repeated or
mass distribution). Tolerance within a reasonable time to implement a dissemination request
commercial communications therefore act primarily as a corrective of excessive legal severity
provisions, but it cannot be equated with the legality or impunity of the conduct. Especially not for
a situation where the disseminator does not respect the opt-out request in time. As follows from the decomposition,
respectively.
documented inquiries sent to the e-mail address in question, accused to this address
sent another business message even after January 24, 2017, specifically on January 26, 2017, January 31

2017 and 2 February 2017, which fully confirms the correctness of the conclusion of the administrative body of the first instance.

In the case of a user's email address

it was proved that he refused

sending business messages on May 9, 2017, and the business message was sent

on May 16, 2017. Although the time between rejection and sending a business message is almost

on the edge of tolerance, it is necessary to reiterate that the tolerable deadline for checking out serves to

correction of the severity of the law only in those cases where, within a reasonable time to rectify,

ie logging out, will actually happen. With strict respect for the eight-day period set out in the decision

and the principle of legal certainty, this objection cannot be accepted either, with regard to the erasure

on 18 May 2017, which is already beyond tolerance.

In other cases, the appellate body did not find any errors and further

about the user's email address

which the accused stated in the appeal

as an example of another disrespect for the eight-day withdrawal period, the appellate body

states that that user documented the refusal to accept commercial communications on 4 February 2017

and 18 February 2017, with commercial communications sent on 19 April 2017 and 27 April

2017. It is thus not at all clear to the appellate body what the accused finds to be inconsistent

decision.

According to the accused, the administrative body of the first instance should have classified it as contradictory

by law, also such commercial communications for which he assessed that they could theoretically have been sent

legitimately. Specifically, it lists the user of the contact

. Regarding

user case

the commercial communication was sent on 4 March 2017, and it was established in the proceedings that

has been discussed above. As for the addressee

and

8/10

the rejection by the user of the contact took place on January 18, 2017. This period is definitely not possible

considered reasonable to implement the opt-out request and therefore this cannot be sent

considered to be in accordance with the law. Given that the accused states that

that, in addition to the specifically mentioned cases, this should have happened in other unspecified cases

contacts, the appeal body also examined the cases of other submissions, but did not find in the decision

no mistakes.

In the case of a commercial communication sent to

the accused states that

the logout message is not a commercial message. The accused must be right that

if it provided a legal title to the dissemination of commercial communications and subsequently responded with such

communications

at the addressee's request to stop further sending, it would not be unsolicited business

communication. However, no legal title was documented and the user of the electronic contact stated

that he has never even registered to receive commercial communications, and therefore this report is necessary

considered as a commercial communication in the sense of § 2 letter f) of Act No. 480/2004 Coll., as it increases

awareness of its existence and activities and also contains links to its operated web portals,

thereby effectively supporting business activity.

Finally, the Appellate Body dealt with the defendant's arguments concerning the proportionality of the fine

and justification of its amount. In her view, it should have been disproportionate, the justification should be

incomprehensible, mitigating and aggravating circumstances should have been incorrectly assessed as well

the principle of non-double counting should be infringed. Introduction to this point of appeal

the authority foresees that the administrative authority of the first instance, when considering the amount of the sanction,

respected both

the legal limit for the imposition of the fine and the imposed sanction. As for

It is necessary to recall that the law allows for the imposition of the assessed conduct
a fine of up to CZK 10,000,000. The imposed fine is thus at the lower limit and can be used
considered rather a preventive and disciplinary sanction. If
it is an alleged double addition
the frequency of sending a commercial communication to certain addressees, the appellate body refers to the text
justification for the decision, which correctly states that the aspect of repetition within the meaning of
the fulfillment of the presumed conduct must be assessed from an objective point of view,
ie repetition of activities - in this case the dissemination of a commercial message. In other words, to fulfill
repeatability as part of the facts, there must be more commercial communication
than once. In contrast, subjective, ie targeted repetition lies in extension
business message several times to the same addressee, as a result of which it is repeatedly infringed
privacy of the person concerned, which increases the social harmfulness of the offender's conduct as it is
legally protected interest is violated with a higher intensity, ie grossly.
The same applies to cases of dissemination of commercial communications, where their addressees receive commercial
communications
they rejected the communication in advance. According to § 11 par. a) of Act No. 480/2004 Coll. with offense
committed by a legal person which disseminates in bulk or repeatedly by electronic means
commercial communication without the consent of the addressee. It is so clear that the very fact of rejection,
resp. sending a commercial communication after rejection is not part of the factual nature of the offense,
for the absence of consent is sufficient for its fulfillment. Objective factual page
thus fully corresponds to the legal obligation under § 7 paragraph 2 of the Act
No. 480/2004 Coll., according to which electronic contact details can be used for dissemination purposes
commercial communications only with the consent of the addressee. The question of rejection is thus important only
in relation to customers according to § 7 paragraph 3 of the cited Act, as only against them it is possible
in the case of the first commercial communication sent after a refusal, de facto refusal

provided that the facts are met, thereby exhausting the opt-out. Customer

however, the relationship has not been established in the commercial communications in question and therefore not on this

point either

appeal, the appellate body does not find the decision illegal.

In the opinion of the accused, they should be unlawful, as other aspects of increasing the harmfulness of the conduct,

taken into account even completely unrelated, and moreover unsubstantiated facts, that is, the accused

is a processor of personal data and also that it should be a problem with the dissemination of business

messages have been notified in the past. As for the first of the objections, the accused interprets

the decision is manifestly incorrect, as page 70 of the decision states: “As far as

the nature of the activities of the accused company, is, according to the administrative body, a professional in the field where

extensive processing of personal data takes place,… “The basic element increasing harm

negotiations is thus mainly professionalism in the field, resp. experience with the activity in question, which

clearly follows from the nature of the accused's activities, the number of portals operated, as well as

Even the accused presents herself on the website and in individual business communications

like "

“. To the second of the above

The appellate body states that it does not find the appeal to be well founded on this point either.

The reasoning of the decision in this context refers to a number of specific file marks, under

which the sending of commercial communications has been repeatedly addressed with the accused, since 2015.

This is without a doubt a matter of increasing the social detriment of the conduct, since

the accused thus had to be fully aware of the obligations associated with the dissemination of commercial communications

nor is it the first case of an error.

In summary, the Appellate Body rejected the defendant's arguments and, after an overall examination

did not find the contested decision illegal or incorrect, nor did it find any errors

in the procedure which preceded the adoption of this Decision. Based on all of the above

the appellate body therefore ruled as set out in the operative part of that decision.

Lessons learned:

Pursuant to the provisions of Section 91 (1) of the Act, this decision shall be challenged

No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

Prague, April 4, 2019

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman