

Path: Home page > Main menu > Supervisory and decision-making activity Control of personal data processing during telemarketing

## Company

The office received a complaint in which the complainant stated that he was contacted by phone by a representative of the inspected with an offer of services. During this telephone call, he was directly addressed by his last name, which shows that the controlled company processes his personal data not in the form of a telephone number, but also other personal data. As evidence, he attached a recording of the phone call, which shows that his complaint was relevant. The complainant further stated that by searching the internet, he found that this practice of the controlled is quite common.

Due to the general prevalence of harmful practices, consisting in the use of personal data for making unsolicited telephone marketing calls, an inspection was launched, the subject of which was compliance with the obligations set out in the controlled Regulation (EU) 2016/679 and Act No. 110/2019 Coll., on the processing of personal data data, in connection with the processing of personal data as part of its business activity, especially in the scope of obligations under Article 5 paragraph 1 letter a), Article 6 and Article 13-14 of Regulation (EU) 2016/679.

The inspection revealed that the inspected party, as a personal data administrator, uses the services of an external processor when processing the personal data of its clients, with whom it did not, however, have a properly concluded contract. The auditee herself admitted this fact, while the contract was concluded during the audit. Therefore, the inspectors evaluated the detected situation in such a way that the inspected party violated the obligation set out in Article 28 point 3 of Regulation (EU) 2016/679, i.e. that, at least in the period preceding March 10, 2020, it did not have a properly concluded contract for the processing performed with the processor whose services it used.

Furthermore, it was found that the controlled entity processes the personal data of clients who have expressed consent to the processing only verbally - by telephone, while this fact is not recorded or archived in any way. Due to the absence of proof of expressed consent, the inspectors evaluated the detected situation as a violation of the obligation set out in Article 7 point 1 of Regulation (EU) 2016/679, i.e. that personal data are not processed in a lawful manner, as the inspected party was not able to prove the existence of the data subject's consent to the processing of personal data (telephone), as the only legal reason for the considered processing.

The inspection also revealed that the inspected party also obtained and further processed in its database data that was

obtained on the basis of satisfaction questionnaires. Based on the information obtained in this way, the call center worker called the data subject with an offer to perform the services that the controlled person deals with. In the course of the inspection, the auditee prepared a balance test, which was supposed to confirm or refute the compliance of this procedure with Article 6 letter f) Regulation (EU) 2016/679. The elaborated balance test proved that the above-mentioned procedure is inadmissible. Among the problematic factors in this processing are the impossibility of expecting the given processing and the fact that the data is provided by someone other than the data subject, as well as the fact that the data of a large number of persons are processed (the data subject does not know that someone has provided his personal data to a third party who is used for telemarketing, while it is part of an extensive database of personal data that is further processed for up to two years). Therefore, the inspectors evaluated the detected situation in such a way that the inspected party violated the obligation set forth in Article 6 point 1 letter f) Regulation (EU) 2016/679. As a result of the above, Article 6, paragraph 1 of Regulation (EU) 2016/679 was also violated.

Further findings showed that the audited company kept clients' personal data for 10 years (customers) and 2 years (others). The auditee did not state the reasons according to which it determined the retention period of personal data of "customers" and "others" in its internal database. In the case of "customers", it was possible to determine that the retention period of 10 years after the end of the contractual relationship corresponds to the limitation period of all potential claims (according to § 611 of Act No. 89/2012 Coll., Civil Code). The retention period of 2 years for "others", i.e. persons whose data is processed illegally for the above-mentioned purpose, was not justified according to the findings of the inspectors, therefore the inspectors evaluated the established situation in such a way that the inspected party violated the obligation set forth in Article 5 point 1 letter e) Regulation (EU) 2016/679, i.e. that personal data are not kept only for the period necessary for the specified purposes. The audit report was delivered to the auditee on May 26, 2020. On June 4, 2020, the auditee waived its objections in writing, and a list of rectified deficiencies was attached as part of this notification.

The control procedure was followed by (initiated) an administrative procedure to eliminate the still unremedied deficiencies.

ContextLocation: Document folders > Site map > Main menu > Supervisory and decision-making activities > Completed inspections > Inspections for the year 2020 > Inspection activities in the field of personal data protection - 1st semester > Sale of goods and services > Inspection of personal data processing during telemarketingView current documents | document archive | documents including the archive