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The inspection of this company was initiated on the basis of 47 requests for sending unsolicited commercial messages. The subject of the inspection was the assessment of compliance with the obligations arising from Act No. 480/2004 Coll., on certain services of the information society, relating to the sending of commercial messages using electronic means. The commercial communications in question contained offers of various products and services (children's goods, cosmetic products, discounts on sporting goods, financial services, erotic goods, etc.) and referred to the relevant websites on which the offered products and services were provided. The owner of the sending e-mail and IP address was the controlled person, who confirmed in his statement that he had implemented the given mailings of commercial messages and stated that all e-mails sent to him had the option to unsubscribe from similar e-mails in the footer of the message. Regarding the legal title for sending commercial messages, she said that specific e-mail addresses are contacts of users of web portals operated by her, who have knowingly given their consent to sending commercial messages. However, the controlled person did not in any way substantiate the granting of the alleged consents and did not even prove that they were its customers. Taking into account the fact that the commercial messages were sent by the controlled person for the benefit of the operators of the websites to which the commercial messages referred, the Office also assessed that, who is the disseminator of commercial communications, namely from the position of the principal - the sender of commercial communications, i.e. the person on whose behalf the controlled person sent the commercial communications. The Office found that the distribution of the business communications in question was carried out by a controlled person for 8 companies, one of which was a foreign company. Only one of these companies responded to the call for cooperation, which stated in its statement that it ordered a marketing campaign from the controlled person. The other companies did not provide the relevant cooperation. As stated above, during the inspection, the inspected person did not in any way provide legal documents for sending business communications to the subject e-mail addresses in accordance with Act No. 480/2004 Coll., on certain information society services, and thus committed a violation the obligations set out in § 7 paragraph 2 of Act No. 480/2004 Coll., i.e. the obligation to use electronic contact details for the purpose of disseminating commercial communications by electronic means only in relation to users who have given their prior consent. The Office further concluded that there was also a violation of § 7 paragraph 4 letter b) of Act No. 480/2004 Coll., because commercial communications (except for one) did not contain a clear indication of the person on whose behalf the communication takes place. In this context, the Office further stated that the companies, on whose behalf the relevant

commercial communications were sent by the controlled person, are in relation to these communications their distributors, namely in the position of the principal - the contracting authority. These companies do not absolve themselves of their responsibility by transferring the distribution of business communications (or initiating them) to a controlled person.

The inspected person did not object to the inspection report.

In this context, the Office initiated the relevant administrative proceedings, in the form of joint proceedings, which were conducted both with the audited person as the sender of the business communications in question, and with the companies for whose benefit the business communications were distributed by the audited entity. In addition, it should be noted that the proceedings were not conducted with companies where only a slight interference with the interest protected by law, which is privacy in electronic communication, was found, i.e. in cases where only a few e-mails were found to have been sent in favor of a certain company. In these cases, these companies were only informed of this fact and invited to negotiate a remedy.

For the aforementioned violations, the Office imposed a fine of CZK 140,000 on the inspected person and fines of CZK 16,000 and CZK 30,000 on the companies in whose favor the commercial communications were disseminated, taking into account mitigating circumstances, that these companies were not the actual senders of the commercial messages in question and that they too could suffer damage to their good reputation and name due to the incorrect procedure of the sender.

Recommendation:

Liability for an offense according to § 11, paragraph 1 of Act No. 480/2004 Coll. is formulated as objective responsibility, i.e. responsibility for the illegal, i.e. resulting state, and the degree of culpability of the resulting illegal state is not taken into account. At the same time, the persons for whose benefit the commercial messages are disseminated must also be considered as disseminators of commercial communications. In addition to the actual sender, the entity responsible for sending commercial messages is also the companies for whose benefit the commercial messages were sent. By transferring the mailing of business communications (or initiating them) to another company, these companies do not relieve themselves of their responsibility, on the contrary, they themselves must be able to document the consent of the addressees of business communications, or they are obliged to negotiate and ensure this status through the forwarding company. It is not possible to rely solely on the contractual assurances of the distribution companies that they have the appropriate consents in their databases. In this context, the Office repeatedly warns companies that do not send commercial messages by their own efforts to sufficiently check their contractual partners and always demand from them sufficient guarantees that the mailing will take

place in a legal manner.

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