

UOOU-01839/21

The inspection at this company was initiated on the basis of eight complaints about the sending of commercial messages, the subject of which was the offer of Covid-19 antigen tests from saliva with a link to the website of the online store. Commercial messages were sent between March and May 2021 via e-mail addresses from the freemail accounts seznam.cz, centrum.cz and gmail.com. The operator of the e-shop, on whose behalf the commercial messages were sent, is the controlled person. The inspected person stated during the inspection that he had sent the commercial messages in question and that the e-mails of the addressees had been obtained through his website. On them, the addressees signed up using the function for subscribing to newsletters in the "news" section with a check box located under the "subscribe" field. The law stipulates that if the addressees of commercial messages are not customers of the controlled person, the controlled person must have with the respective consents of their addressees. The fact that the addressees signed up for the newsletter was proved by the controlled person only by stating the e-mail address with the date of its registration. The respective complainants (i.e. the addressees) were confronted with this information and asked to comment on the given registration. All the complainants agreed that they had not registered on the website in question. The inspectors also performed a trial registration to verify its method and validity. Taking into account the fact that no confirmation of the entered data is required during registration, the Office stated that the controlled person did not document and therefore did not prove that he obtained consent to send commercial messages from the users of the e-mail addresses in question, to which he subsequently sent the commercial messages. the person thus sent commercial messages to the recipients' electronic addresses without their prior consent and thus committed a violation of Act No. 480/2004 Coll. In one case, the audited person also violated the obligation set out in this law, as the commercial communication in question was not sufficiently marked. And then she broke the law, because the sent commercial message did not contain information about the spreader, or about the person on whose behalf the commercial communication is being sent. For this violation, a sanction of CZK 25,000 was imposed on the controlled person in an administrative proceeding, which has already become legal. Recommendation: In this context, the Office states that according to Article 2 letter f) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 on the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) and Article 94 paragraph 2 of the General Regulation must consent to the sending business communications

to meet the data subject's consent parameters according to the general regulation. The conditions for obtaining a valid consent are thus also applicable in situations falling within the scope of Directive 2002/58/EC, or Act No. 480/2004 Coll. In the context of the right to the protection of personal data, consent is only valid if all its requirements are met. It is therefore the controller's duty to prove that the data subject has given consent to the processing of their data.

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