

FOR PRIVACY PROTECTION AND STATE TRANSPARENCY Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee /

www.aki.ee Registration code 70004235 PRELIMINARY WARNING in personal data protection case no. 2.1.-6/21/15

Injunction maker Data Protection Inspectorate lawyer Sirgo Saar Time and place of injunction 18.05.2021, Tallinn Injunction addressee - personal data processor Tele2 Eesti Aktsiaselts Registration code 10069046 tele2@tele2.ee, Kristi Mets Data Protection specialist kristi.mets@tele2. com Responsible person of the personal data processor Tele2 board RESOLUTION: § 56 (1), (2) point 8, § 58 (1) of the Personal Data Protection Act (IPS) and Article 5 (2) and Article 6 of the General Regulation on the Protection of Personal Data (IPD), as well as Article 58 (1) of the Personal Data Protection Act point a, and taking into account point e of the same paragraph and point d of Article 58, paragraph 2, and on the basis of § 133, paragraph 4 of the Electronic Communications Act, the inspectorate issues a mandatory injunction for compliance: 1. Stop sending electronic direct marketing to the complainant's e-mail address XX. . Report compliance with the order to the e-mail address of the Data Protection Inspectorate at info@aki.ee no later than the deadline set for this purpose. REFERENCE FOR DISPUTES: This order can be challenged within 30 days by submitting either: - an appeal under the Administrative Procedure Act to the Data Protection Inspectorate or - an appeal under the Administrative Court Procedure Code to the administrative court (in this case, the appeal in the same matter cannot be reviewed). Challenging a precept does not stop the obligation to fulfill it or the implementation of measures necessary for fulfillment. WARNING: If the injunction is not complied with by the set deadline, the Data Protection Inspectorate will impose a fine of 3,500 euros on the addressee of the injunction based on § 60 of the Personal Data Protection Act. A fine may be imposed repeatedly - until the injunction is fulfilled. If the recipient does not pay the penalty, it will be forwarded to the bailiff to start enforcement proceedings. In this case, the bailiff's fee and other enforcement costs are added to the enforcement money. MISCONDUCT PUNISHMENT WARNING: Failure to comply with the prescription under Article 58(2) of the Personal Data Protection General Regulation may result in a misdemeanor proceeding based on § 69 of the Personal Data Protection Act. For this act, a natural person may be fined up to EUR 20,000,000, and a legal person may be fined up to EUR 20,000,000 or up to 4 percent of its global annual turnover of the previous financial year, whichever is greater. The non-judicial processor of misdemeanor proceedings is the Data Protection Inspectorate. FACTUAL CIRCUMSTANCES: On 01.03.2021, the Data Protection Inspectorate received a complaint from the applicant XX regarding the electronic direct marketing that he received from Tele2. The applicant signed a communication service contract with the data processor on 05.02.2021, in which he prohibited the sending of direct mail to the extent specified in the contract as a

standard condition. Despite this, Tele2 sent an electronic direct mail to the complainant's e-mail on 18.02.2021. The applicant sent a reply to the letter, in which he pointed out the violation, recalled the ban and asked for an explanation as to why such a thing had happened. Tele2 responded to this on 19.02.2021 and announced that it had removed the sending of offers and advertisements from the system, and on 20.02.2021 it confirmed again that changes have been made to the system and the complainant will no longer receive advertisements. But despite this, the complainant received another direct mail on 25.02.2021 with a link at the end that allows the customer to exercise his right to refuse through self-service. The applicant has clearly expressed the prohibition three times during one calendar month (at the time of signing the contract on 05.02.2021 and in e-mails on 18.02.2021 and 19.02.2021), but the data processor, despite his own assurances, has ignored this prohibition and has unlawfully violated this prohibition and has misused the applicant's personal data . XX has also received several direct mails from the data processor after filing the complaint. Based on the above, the inspection started the supervision procedure on the basis of § 56 (3) point 8 of the Personal Data Protection Act. The inspection explained in the inquiry and proposal of 01.04.2021 that the Electronic Communications Act (ESS) § 1031 subsection 1 states that the use of electronic contact data of a natural person user or customer of a communication service for direct marketing is only permitted with his prior consent. In this case, the applicant has not given consent to Tele2 to send direct mail, so the direct mail has been sent without a legal basis. Pursuant to § 1031 subsection 5 of the ESS, the obligation to prove the consent specified in subsection 1 of this section rests with the person on whose behalf direct marketing is carried out. Also, pursuant to Article 7(1) of the General Regulation on the Protection of Personal Data, if the processing is based on consent, the controller must be able to prove that the data subject has consented to the processing of his personal data. The inspectorate also explained that according to § 1031 subsection 4 point 5 of the ESS, the use of electronic contact data for direct marketing is prohibited if the user, client or buyer of the communication service has prohibited the use of their electronic contact data for direct marketing. According to the electronic direct marketing instructions of the inspectorate, in other words, a person cannot voluntarily decide whether or not to give consent under standard conditions, therefore the direct marketer must not decide in advance for the person whether to give consent under standard conditions. Consent may be formally given with the standard terms and conditions, but the direct distributor must not pre-decide the granting of consent for the person in the standard terms and conditions, but the person must be able to freely decide on the granting of consent. The applicant specifically indicated that he did not want direct marketing (checked the appropriate box). In addition, the inspectorate noted that the data subject cannot opt out of

newsletters, because he has not given his consent to opt out. If Tele2 takes consent when purchasing a product or when concluding a contract, the data subject cannot be obliged to log into the system somewhere, it is sufficient if the person sends an e-mail with a request to withdraw consent. If you legitimately send direct mail based on consent, you must be able to withdraw consent in the same way. Tele2 responded to the inspection's inquiry and proposal as follows: 1. On what legal basis was electronic direct marketing sent to the complainant? To the extent that the applicant had prohibited the use of his contact data for electronic direct marketing, we agree with what was stated in AKI's letter that there was no consent as a legal basis. 2. Why was electronic direct marketing sent to the complainant several times, even though he had already initially denied it, i.e. there was no consent to send direct mail? We note that the transmission of direct marketing was based on the fact that on the basis of ESS §1031 subsection 3 p. 1, the buyer's electronic contact data can be used for direct marketing of similar products or services to the buyer, if the buyer is given a clear and comprehensible option during the initial collection of his electronic contact data, free of charge and in a simple way, to prohibit his such use of contact information. The customer always has the option to disable the use of contact data when activating services, including self-service also independently. Tele2 agrees that direct marketing should not have reached the customer, since the customer expressed a wish to prohibit the use of his contact details. Even if the customer wants to use the opportunity to refuse direct marketing, this should happen after a one-time contact/request, so we also apologize to the customer, this situation should not have happened. 3. The applicant has done everything in his power not to receive direct mail, why did the applicant receive another direct mail after the second ban? During the investigation of the mentioned appeal, we found that the customer management system transmitted the refusal of consent with a postponing condition (with a future date), so it was an error arising from the system. Therefore, the client had to contact us repeatedly, as the data did not move forward from the program. We are working on finding an error in the system, by now we have mapped all customers who may have been affected by the mentioned problem. AKI's Proposals: 1. Prohibit the use of the complainant XX's e-mail address XX to send electronic direct marketing. The e-mail address XX in question has been removed from the list of direct marketing recipients. 2. To review and remove all other data subjects from the list of recipients of electronic direct marketing whose data the data processor has obtained without a legal basis or to whom direct mail is sent without prior consent. For the purpose of the quality of the database, Tele2 Eesti AS has on 12.04.2021 removed the consent of natural persons to receive direct mail from customers of the communication service, and on the basis of legitimate interest, forwards an e-mail to these data subjects with a proposal to renew their consent. 3. Adopt an easier way for

the data subject to opt out of direct mail (opt-out link or reply to electronic direct mail by e-mail). Logging in to self-service is not a sufficiently reasonable and easy way for the data subject to opt out of emails. We explain that the customer can opt out of direct mailings in self-service by sending a written statement to Tele2 or via the call center. Opting out of direct mail via self-service is a standard and very common way in Estonia, which is also used by other communication companies (Examples attached). When marketing by SMS, electronic direct marketing sent to the number can be disabled automatically by calling the short number in Tele2. According to Tele2, it is currently possible for the customer to realize the right to refuse through the electronic communication network, including more than one channel in total. Self-service is a central place where the customer can change his data and consents on his own initiative by logging in, i.e. identifying himself, this can also be withdrawn from an e-mail received from outside, i.e. consent without receiving direct marketing and without a direct link from there (or even before the letter). We take into account the proposal to opt out of direct mailings with a direct link, but if possible, we ask the Data Protection Inspectorate to explain more broadly and unambiguously to all communication service companies what is a sufficiently reasonable and simple way to opt out of e-mails (and why it is not opting out of consent via self-service).

4. To confirm that the complainant will no longer receive direct mail to his e-mail. Tele2 Eesti AS confirms that the complainant will no longer receive direct mail to his e-mail. Therefore, Tele2 has confirmed that no more e-mails with direct marketing content will be sent to the complainant. After that, the inspection terminated the supervision procedure, as the violation had been eliminated according to Tele2 (system error). However, on 20.04.2021, the applicant received a new e-mail to the end of the procedure, which the applicant forwarded to the inspection. On 05.05.2021, the inspectorate asked the data processor to explain the situation by forwarding the relevant cover letter to the data processor. Taking into account that Tele2 has still sent electronic direct marketing to the complainant after the end of the procedure, i.e. confirmed on 13.04.2021 that no direct marketing will be sent to the complainant, but 7 days later (20.04.2021) the inspectorate already received a new request that Tele2 has sent a new direct mail to the complainant, the inspection cannot consider the proposal sent on 13.04.2021 as fulfilled, therefore we update and continue the supervision procedure in case No. 2.1.-1/21/735.

EXPLANATION OF THE PROCESSOR OF PERSONAL DATA: Tele2 explained the following after sending a new e-mail: Dear customer, I am responding to your letter, which you forwarded to the Data Protection Inspectorate, wishing to receive clarifications about the letter forwarded to you by Tele2, having previously confirmed that it will not send you direct marketing. I will first briefly explain that personal data may be processed if one of the six legal bases listed below applies. In particular, personal data is

processed: a) with the consent of the data subject; b) for the performance of a contract to which the data subject is a party; c) to fulfill the legal obligation of the controller; d) to protect the vital interests of the data subject; e) to perform a task related to general interests; f) On the basis of the controller's legitimate interest. Based on your consent, you will receive offers regarding services and products offered by Tele2, as well as campaign advertisements or newsletters. Processing based on consent applies to a specific purpose. Legitimate interest is used as a basis, for example, in everyday business activities and also in customer communication. In other words, the company communicates with the customer on other grounds than just consent, depending on the content and purpose of the communication. For example, on the basis of a legitimate interest, we may ask you to review your contact details and information, so that messages sent later always reach you. As a result, it is not possible to completely remove all communications transmitted by the company to the customer by restricting processing on the basis of direct marketing consent. If you wish to object to processing based on legitimate interest, please submit the corresponding statement directly to Tele2 so that we can review it. If you wish to object to the processing, please specify in the application which activities you wish to restrict the processing of personal data (or if, for example, you simply wish to restrict the communication as a whole, regardless of the basis, let us know and we will respond to you). 20.04.2021 Email sent to you. On 20.04.2021, a letter with a proposal to renew the consent was forwarded to the customers. The letter was forwarded on the basis of legitimate interest. In this case, the interest was to ensure the quality of the Tele2 database so that no customer would receive unwanted offers, for this we asked the customers for a new consent. We also unilaterally set the default value of the customers' direct marketing consent to "no", i.e. by removing the customers from the direct marketing recipients. When forwarding the letter, we took into account, among other things, the following: a) As the controller, it is our interest and obligation to ensure the quality of the database in such a way that the requirements arising from ESS §1031 are met; b) We take into account the fact that by renewing the consent, the customer's interest and right to receive further direct marketing is guaranteed only on the basis of previously granted consent; c) The personal data processed were the customer's name and e-mail address; d) The content of the letter was not direct marketing, taking into account, among other things, the provisions of § 5 of the Information Society Service Act. Consent was not asked for sending an offer or guaranteeing a discount, nor was there any offer of Tele2 services or products in the letter. The letter explained in plain language the purpose of giving consent to direct marketing. e) For customers who did not renew their consent, the consent value "no" is applied by default, i.e. direct marketing will not be sent to them, until they themselves make the corresponding change. Also, simply not responding to the

letter does not lead to different consequences. The same applies to you, you do not have a valid consent, so no direct marketing will be sent to you. I hope that the above explanations are sufficient, and I apologize that you have previously had to contact Tele2 repeatedly regarding the issue of consent. As a result of your appeal, we corrected our actions very thoroughly, and of course you should have received a suitable solution from us immediately. If you have additional questions regarding personal data, you can always contact dpo_estonia@tele2.com or by replying to this e-mail. With this, the inspectorate has fulfilled its obligation in § 40 (1) of the Administrative Procedure Act to give the party to the procedure the opportunity to present their opinion and objections on the matter before issuing the administrative act. GROUNDS OF THE DATA

PROTECTION INSPECTION: In accordance with § 58 (1) of the Personal Data Protection Act and Article 58 (1) point a of the General Regulation on Personal Data Protection and taking into account point (e) of the same paragraph, the inspectorate has the right to request explanations and other information, including the submission of documents necessary for conducting the supervision procedure. The inspectorate asked Tele2's activities to be brought into line with the provisions of the ESS in terms of direct marketing broadcasts. Tele2 apologized for sending direct mail to the complainant without a legal basis. Tele2 confirmed that the violation has been eliminated and no more direct mail will be sent to the complainant. Unfortunately, Tele2 still sent a new electronic direct marketing, citing legitimate interest. The inspectorate explains that the content of the letter "Activate your personal offers HERE" is not a letter sent on the basis of legitimate interest. It is a classic direct mail notification that invites the data subject to use the Tele2 service. It is not a significant change or a change to the terms of the contract, according to which it is necessary to inform the data subject. The data subject has made it clear throughout the procedure that he does not want any e-mails advertising Tele2 services or inviting him to use any services. The data subject entered into a communication service contract in order to use the communication service. Other important information corresponding to contract changes is possible and in certain cases even necessary to be forwarded to the data subject, but not information that "the corresponding preferences can be changed here", etc. According to the ESS guidelines, if sending an offer in any way promotes the activities of an entrepreneur, political organization or charitable association, it is always direct marketing.¹ Therefore, in this case, from the point of view of the inspectorate, it is electronic direct marketing, which cannot be sent on the basis of legitimate interest, since sending direct mail to a natural person is regulated by the ESS is. Therefore, Tele2 has violated ESS § 1031, paragraph 1, where the data processor does not have the consent of a natural person to send direct marketing. This has also been confirmed by the data processor himself in response to the inspection's inquiry. According to §

1031 subsection 4 paragraph 5 of the ESS, the use of electronic contact data for direct marketing is prohibited if the user, customer or buyer of the communication service has prohibited the use of their electronic contact data for direct marketing. The applicant has prohibited the use of his contact details for sending direct marketing at the time of signing the communication service contract. Tele2 has violated the respective agreement between the parties, as well as § 1031 paragraph 4 point 5 of the ESS. Based on Article 5 of the IKÜM, when processing personal data, it is ensured that the processing of point a is legal, fair and transparent to the data subject ("lawfulness, fairness and transparency"); and point b personal data are collected for precisely and clearly defined and legitimate purposes and are not subsequently processed in a way that is inconsistent with these purposes. If the processing of personal data does not comply with the principles set forth in Article 5 of the IKÜM, the processing of personal data is prohibited. The data processor has violated Articles 5 and 6 of IKÜM, insofar as there is no legal basis for data processing (sending spam). According to article 58, paragraph 2, point d of IKÜM, the inspectorate has the right to order that the responsible processor or the authorized processor, in appropriate cases, bring personal data processing operations into compliance with the provisions of this regulation in a certain way and within a certain period of time. Pursuant to § 25(1) of the Administrative Procedures Act (HMS), an administrative act, invitation, notice or other document is delivered to the party to the procedure by post, by the administrative body that issued the document, or electronically. Taking into account that on the basis of the information collected as part of the supervisory procedure of the administrative body, there is a continuing violation of the requirements of the ESS, the inspection considers that issuing a mandatory injunction is necessary in this case to eliminate the violation in the supervisory matter. Sincerely, /signed digitally/ Sirgo Saar jurist on the authority of the director general 1 https://www.aki.ee/sites/default/files/dokumendid/elektrooniliste_kontaktandemte_kasutamine_otseturustuskus-uuendt20.02.2015.pdf