

UOOU-00685/20

The control was initiated on the basis of the Control Plan of the Office for 2020, namely in the matter of processing personal data for the purposes of direct marketing within the framework of registrations on portals operated by the company, the possible linking of individual portals into one database and the realization of the rights of data subjects according to Regulation (EU) 2016/ 679. Furthermore, the control was also focused on the area of sending commercial messages, when the control determined how personal data (e-mail address, telephone number) is obtained, how commercial messages are disseminated and how the user of the given electronic contact is informed about it, and also how the conditions for the dissemination of commercial communications are fulfilled according to Act No. 480/2004 Coll. The inspectors verified the processing of personal data of customers or registered users in connection with the individual services provided by the inspected person. These were subscription services, as well as the service of setting up an e-mail box on the respective domains and the related sending of infotext messages (these are messages sent to users of established e-mail boxes that contain commercial messages, i.e. the offer of products and services, of third parties) , as well as the service of sending newsletters, and the service associated with sending business messages within event pages. The inspectors carried out individual test registrations, test orders, etc., and also based on the statements of the inspected person and, last but not least, the local investigation, where it was verified how individual data is entered into the systems of the inspected person and how it is further worked with. Inspected person processes personal data for the purpose of direct marketing and sending commercial messages either on the basis of a legitimate interest (in the case of its customers and the offer of its own and similar products and services) or on the basis of consent (in the case of sending commercial messages for the benefit of third parties, or offers from event pages, or offers based on newsletter registration or regarding the processing of personal data of website visitors through marketing cookie files). With regard to compliance with obligations in the implementation of the rights of data subjects, the inspection did not record any violations in this area. In the part of the inspection concerning sending commercial communications by electronic means, it was found that the controlled person sends commercial communications both on the basis of consent and on the basis of legitimate interest. In connection with compliance with the conditions for the dissemination of commercial communications, it was found that in the case of sending commercial communications for the benefit of third parties (so-called info texts), the condition of indicating the identity of the sender on whose behalf the communication is being carried out was not

fulfilled by the controlled person. The commercial communication must therefore contain the identification of the natural or legal person whose products, goods or services are promoted by the commercial communication. For such a designation, it is necessary to provide a clear identification of the entrepreneur, i.e. a clear indication of the business company, name with additions and possibly other identifiers, such as the company's ID number (another identifier could be, for example, the registered office, VAT number, address of the establishment). For example, a mere link that redirects the addressee to the website of the person on whose behalf the commercial message is being sent cannot be considered as sufficient indication. As part of one verified mailing (a campaign for the benefit of a third party) sent by the controlled person, a technical error was detected when, as a result of adding the functionality of system messages, the pre-set conditions for the given mailing were canceled, and as a result, the business message in question was erroneously sent to 250,000 e-mail addresses for which consent to sending business communications was not registered. This error was detected by the audited person on the basis of the established control mechanism. Based on this, the inspected person took appropriate measures to prevent the situation from recurring. These measures, consisting in the introduction of a sub-database only with addressees who gave consent, were verified by the Office as part of the inspection. The inspected person filed objections against the inspection findings, which were rejected by the Chairman of the Office. The subject of the inspection was the sending of business communications to e-mail addresses 250,000 addressees without their consent and without specifying the identity of the person in whose favor the commercial message is disseminated, administrative proceedings were conducted. The accused filed an appeal against the issued decision, which, however, was rejected by the President of the Office and the sanction of CZK 250,000 imposed by the first-instance authority was confirmed. The method of realization of the administrator's legitimate interest in the actual sending of business messages via electronic means is precisely determined by the provisions of Act No. 480/2004 Coll., on certain services of the information society, which in this area is therefore a special legal regulation to the general regulation. § 7 paragraph 3 of Act No. 480/2004 Coll. applies to the sending of commercial communications to customers, where commercial communications can be sent to customers without their prior consent (opt-out principle), but the customer must have the option to refuse this sending before sending such a commercial communications (e.g. the merchant allows the customer, as part of the terms and conditions or upon final confirmation of the order, to check the box that he does not wish to receive commercial communications). If the customer does not reject this in advance, this option must be given in every further sent commercial communication. At the same time, according to § 7 paragraph 4 of Act No. 480/2004 Coll. it is prohibited to

disseminate commercial communications that are not clearly and clearly marked as commercial communications; which would hide or conceal the identity of the sender on whose behalf the communication is being made; and which would be sent without a valid address to which such sending can be directly and effectively refused.

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