

UOOU-00687/20

The inspection of this company was started on the basis of the inspection plan for 2020, due to the fact that the domain of the gambling company has appeared at the top of spam trap hits in recent years, although no initiative or complaint. The relevant control was focused both on compliance with the conditions under which commercial communications can be disseminated by electronic means pursuant to Act No. 480/2004 Coll., on certain information society services, and in relation to the processing of personal data and the fulfillment of the information obligation in the dissemination of commercial communications pursuant to of the general regulation in relation to direct marketing. The inspectors found out on the basis of which legal titles the inspected person sends, or distributes commercial (marketing) communications by electronic means and whether the commercial communications are sent (distributed) by the controlled person or whether the controlled person uses other entities to send them. The inspection found that the inspected person sends commercial messages using his own means (e-mail communication) or uses the SMS gateway of a third party. Personal data for these purposes is obtained by the controlled person directly from the data subjects, when registering a customer online account or via a mobile application. Thus, the user can set his preferred method of communication or cancel the sending of commercial messages when registering, and at any time later. During registration, the e-mail address (via the sent confirmation line) or phone number (via the sent confirmation PIN code) is also verified. In all cases, the data subject has at his disposal the wording of the consent, including the document Protection of personal data, which contains information about the way in which the controlled person processes personal data of users. The last way of providing personal data is their voluntary provision through a business network or as part of various projects, competitions or marketing events. The very setting of consents, as well as their granting or revocation, i.e. how these changes are reflected in the controlled person's systems, was verified directly during the local investigation. In the same way, all documents that are part of the information obligation were checked. It is thus evident from the control findings that the controlled person sends commercial communications only on the basis of consent pursuant to § 7, paragraph 2 of Act No. 480/2004 Coll., while giving its customers the option to refuse the sending of commercial communications in advance, by not checking field for granting consent when registering for a player's online account or within the mobile application. The Office states that it is up to the controlled person which legal title he uses for sending commercial communications (from the point of view of Act No. 480/2004 Coll.), i.e. that he does not, for example, use the so-called customer exception (§ 7 para. 3 Act No.

480/2004 Coll.). As part of the local investigation, a sample of the relevant campaign was also requested, both e-mail and SMS campaigns, in order to assess whether the commercial messages sent also meet the other conditions (in connection with their form) set out in § 7 paragraph 4 Act No. 480/2004 Coll. In this context, the inspectors stated that these other conditions (marking, indication of the person for whose benefit the commercial communication is being sent and, last but not least, the indication of a valid address to which the commercial communication can be rejected) were fulfilled by the inspected person. The Office had only one reservation and in this context recommended its modification to the inspected person, namely in the case of indicating the sender for whose benefit the commercial communication is disseminated. In the texts of business communications, the fully experienced designation of the controlled person was given, however, it was recommended to state the full name of the company, including additional identifying information, e.g. ID number or registered office. And in the case of commercial messages sent via SMS messages, the inspected person was advised to allow unsubscribing from further sending of commercial messages also using this channel (i.e. by phone - SMS message), not just by logging into the customer's profile via the web interface. In addition, the controlled person stated that this setting is currently under development. In relation to compliance with Article 17 of the General Regulation (right to erasure - right to be forgotten), Article 21 of the General Regulation (right to object) and Article 12 of the General Regulation (obligation to provide information) in connection with the sending of commercial communications as part of direct marketing, the audited person demonstrated specific procedures for dealing with these requests, documented internal guidelines related to the handling of personal data, and which describe in more detail the ways in which the subjects' requests are processed data, documents relating to the information obligation were also documented. At the same time, compliance with these provisions was also verified during a local investigation and also through previews of websites or through the execution of a test creation of a customer (player) account. In this context, the Office stated that at the time of the inspection, no violation of Article 12, Article 17, or Article 21 of the General Regulation was detected by the inspected person. Recommendation: Commercial communications can be sent by electronic means on the basis of two legitimate reasons, namely consent, which is stated in § 7, paragraph 2 of Act No. 480/2004 Coll., on certain information society services, and on the basis of the so-called customer exception, i.e. without consent, subject to the fulfillment of the conditions stated in § 7, paragraph 3 of Act No. 480/ 2004 Coll. However, the data subject must be sufficiently informed about the legal title used by the distributor to send commercial messages. If, for example, the distributor decides to use only consent, and therefore the exception according to § 7, paragraph 3 of Act No. 480/2004

Coll. against its customers, the data subject must be duly informed of this fact. It often happens that these legal titles are confused within the commercial terms, are not sufficiently explained or are used as it suits the spreader of commercial messages.

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