OFFICE FOR PERSONAL DATA PROTECTION

Lt. Col. Sochora 27, 170 00 Prague 7

tel .: 234 665 111, fax: 234 665 444

posta@uoou.cz, www.uoou.cz

* UOOUX00D5KU3 *

Ref. UOOU-08277 / 18-40

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29 and § 32 of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts, according to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, and according to § 10 paragraph 1 letter a) of the Act

No. 480/2004 Coll., on certain information society services and on the amendment of certain acts,

decided on 6 March 2019 pursuant to § 152 para. b) of Act No. 500/2004 Coll. thus:

Disintegration of the accused, the company

, based

, against the decision of the Office for Personal Data Protection

Ref. UOOU-08277 / 18-27 of 8 November 2018, is rejected and the contested decision

is confirmed.

Justification

By decision of the Office for Personal Data Protection ref. UOOU-08277 / 18-27 of 8 November 2018 (the "Decision") was a company

based

(hereinafter referred to as the “accused”), found guilty of the offense

offense according to § 11 par. 1 let. a) point 1 of Act No. 480/2004 Coll., on certain services information society and on the amendment of certain laws, as it disseminated without the consent of the addressees by electronic means business communication on the statement specified contacts. For the above

described conduct, the accused was fined CZK 90,000.

On November 26, 2018, the accused filed through her attorney against the above

proper dismissal of that decision. She supplemented this with a note dated 10 December 2018.

The defendant initially stated in the appeal that she generally considered the decision to be illegal,

as he considers the decision to be confusing, unreviewable, he justifies it

serious shortcomings and, moreover, is based on an error of law. Further in brief

summarized the current course of administrative proceedings, including the simultaneous control of the Office for Protection

personal data (hereinafter referred to as the "Office") file no. UOOU-06364/18 led by inspector Mgr. Daniel

Rovan. Subsequently, she commented on the individual reasons for the dissolution and illegality of the decision.

to a phone number

First, on the question of the unreviewability of the decision, the defendants stated that the Office had arrived in fact

to different conclusions in similar cases, without adequate justification, as a result

which the decision is intended to show as to deficiencies in the statement of reasons which resulted in its illegality.

She also commented on sending a business message on May 22, 2018 from a hidden phone number

under the alias

Although a picture is based on the administrative file

screen proving the revocation of the addressee's consent of October 6, 2017, the decision incorrectly

states the withdrawal of consent on 6 October 2018. In the opinion of the accused, this is a factual error

indicating that the decision is based on facts which are not apparent from the file and is therefore

illegal. At the same time in addition to the appeal the accused added that the screen shot presented

cannot be considered as sufficient evidence that the consent was actually withdrawn, on the one hand

given that it is not clear to whom the request for withdrawal of consent should have been sent or which

to be delivered to the person and, secondly, the picture does not indicate whether the appeal process was

completed.

The accused also commented on the validity of the consents. In her view, the Authority assessed this

incorrectly when he did not find sufficient granularity in the consent. In the opinion of the accused, he was

consent is granted for a coherent group of operations designated as obchodní commercial purposes ', which it has

be sufficiently specific purpose definition, as the Office's requirement for the separation of consents to

By sending commercial communications to third parties from other consents it is not possible under the applicable law

justify any adjustments. She commented similarly on the issue of non-information

on the identity of third parties. In the opinion of the accused, such an obligation is not possible in this case either

because personal data are not passed on to third parties.

According to the grounds of the appeal, the Office should also have incorrectly assessed the issue of freedom

expression of consent given through

. Within

the argument first accused again described the method of obtaining consent through

portal

, stating that the method described makes it possible not to give consent, for

with just two clicks. The accused concluded this point, not giving consent

did not result in the blocking of the portal service, as the service was full even without the consent

available, so that everyone is free to decide whether or not to give their consent.

In conclusion, the accused further challenged the decision as an act interfering with a legitimate one

expectations and equality of the party to the proceedings. She stated that the consents were at the same time

examined within the control of file no. UOOU-06364/18, in which, however, the Office assessed the consents as

in accordance with the law. At the same time, she pointed to the fact that the method of obtaining consents

it has been examined by the Office repeatedly in the past, but it has never found it to be

illegal, while emphasizing that the consents used by it corresponded to the materials published

on the Office's website. On the basis of all the above, the defendant considers that

The Office, on its part, and among all other market participants offering commercial mail

commercial communications has given rise to a legitimate expectation that the consents obtained by it are valid. He has so

the fact that, by issuing the contested decision, the Office interfered with the legitimate expectation thus created,

infringed the principle of legal certainty as well as the equality of the party to the proceedings vis-à-vis other market participants

entities.

In a supplement to the appeal of 10 December 2018, the accused commented in detail on

in each individual case of sending an unsolicited commercial communication specified in

of the contested decision and stated that, in all cases, it had a valid legal basis

title to send commercial communications, either by consent or by a customer relationship in

pursuant to the provisions of Section 7, Paragraph 3 of Act No. 480/2004 Coll.

internet applications

Based on the above arguments, the accused proposed that the President of the Office be challenged

annulled the decision and stopped the proceedings, or returned the case to the Office for a new hearing.

The appellate body reviewed the decision in its entirety, including the previous process

its release, and reached the following conclusions.

The appellate body first considered the alleged unreviewability. In this context

first of all, it states that consent to the sending of commercial communications must meet the parameters of consent

data subject according to Directive 95/46 / EC, resp. since the entry into force of the European

(EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation)

"General Regulation") requirements set out in this Regulation. However, it must be emphasized here that

the new legislation contained in the general regulation reinforces the emphasis on transparency

processing and specifies and specifies the individual requirements for consent as

one of the legal titles authorizing the processing of personal data, including the need to separate

consent for various purposes. However, with respect to the principle of non-retroactivity, these are possible

requirements and specifications only in relation to commercial communications made after the acquisition

applicability (effectiveness) of the general regulation. The accused company itself responded to the change

legislation by collecting new consents. The administrative body of the first instance thus assessed the matter

correctly if he applied the consent requirements of the General Regulation to commercial matters

messages sent after 25 May 2018 and not to messages before that date (see eg accused

the above - mentioned commercial communication of 25.

January 2018 to the e - mail address

).

Other commercial communications for which the administrative authority of the first instance did not find an infringement

of the law in the matter of disposing of a legal title for their dissemination, which the accused considers a document

inconsistency of the decision, the appellate body shall state the following.

Users

a business message was sent on 30 July 2018

with the offer of goods and services of the accused, who proved that the addressee in question is hers

customer.

Users

an update request was sent on 30 July 2018

consent to the processing of personal data for commercial purposes, the accused proving that

this is her customer. As correctly stated in the decision, the content of the communication is necessary

considered to support the accused's own activities and image, and therefore also in this case the accused

duly substantiated the existence of a legal title.

Business message sent on August 17, 2018 from the email address

on

cannot be considered as a third party offer. The subject of the communication was an offer

the possibility of using the services accused under its discount program, which in turn

primarily acts to promote the image of the accused company. The subject of the offer was not

directly the goods or services of third parties to whom the discounts related to the defendant applied,

but it was precisely the offer of the program itself, and therefore from the point of view of Act No. 480/2004 Coll.

this commercial communication must be regarded as supporting one's own commercial activity

accused.

User

nor at the request of the Office did he duly prove that he was on the side of

the defendant sent a commercial communication, while the accused also sent the e-mail in question

does not register. The appellate body thus finds that the administrative body of first instance in the statement of reasons

3/10

the decision incorrectly concluded that the accused company had proved the existence of a legal title

to send the communication in question, as the sending itself cannot be attributed to the accused. This defect, however

does not affect the legality of the decision, given the absence of any harm to the accused

company or other person.

As is apparent from the statement of reasons for the decision, all commercial communications sent before

applicability of the general regulation and which were sent by the administrative authority of the first instance

found illegal (ie commercial communication dated 16 November 2017, 22 May 2018

and May 23, 2018), was judged to be inconsistent with the law not for the content of the consent but

for the fact that it was sent to the addressees after disagreement with the further sending. Agreement

user phone number

, to which a commercial communication was sent on 23 May

2018, could not be applied to the communication in question, as its effectiveness was postponed to

May 25, 2018. The accused herself admitted her mistake in this case.

The appellate body thus considers the reasoning of the decision to be fully consistent; it did not find any

alleged internal inconsistencies and at the same time notes that all conclusions were duly substantiated

and supported by file material.

The question of interference with the legitimate expectations and equality of the parties is necessary

in particular, it should be recalled that the legality of the conduct must always be based on valid

and effective legislation, without ignorance of the law. Each statement is subject to its own

and therefore the materials published on the Office's website, including the document

the questions asked to Act No. 480/2004 Coll. ”must be subjected to a critical analysis and taken into account
new legislation, as well as to take into account the natural evolution of legal opinions. In that
In this context, the Appellate Body also considers it necessary to emphasize that the accused company is
professional in the field of electronic communications and marketing, and therefore all the more so
legislative
also record and reflect opinion shifts. Although the Office is preparing
Reconstruction of the "Unsolicited Commercial Communications" section of its website is not in its
to ensure that they are kept up to date. All opinions presented here are purely
of an informative nature, they cannot be considered legally binding and they express the opinion of the Office
on a specific date. However, the office regularly
informs about its positions, legal developments
and past cases. The development of opinions is evidenced, for example, by another text published on the web
website of the Office1, where he informed that the legal limitations of commercial communications under the law
No. 480/2004 Coll. also apply to the dissemination of commercial communications in the form of a contract, issue
instruction or other means of initiating the dispatch for this purpose, the concluded contract being binding
inter partes only, but no public liability can arise
influence. This results in an increase in the number of disseminators in cases where shipments take place
commercial communications in favor of third parties, which is also important for resolving the case.
As further stated by the Office on its website in the text of 28 February 2018
entitled "Many distributors of commercial offers have a problem with compliance with the law", agrees
by sending commercial communications, it should also contain their factual specification. Specifically here
states: “The consent clause in question goes on, in addition to the other requirements concerning
as such, must justify the disseminator in question and at the same time
and define the subject matter of commercial communications. ”Legal opinion of the Office that consent to sending
Commercial communications cannot be given to a generally indefinite circle of distributors to indefinite

1 Office for Personal Data Protection. Not only the sender is responsible for disseminating commercial communications, but

also

and the customer. Published on May 5, 2017. Available from: https://www.uoou.cz

offers, as well as an opinion on the liability of the initiator of the business distribution, was also expressed

in the decision of the Office of 27 July 2018 ref. UOOU-03164 / 17-34, which accused her

The company is fined for the dissemination of unsolicited commercial communications and on which the accused

in the text of the appeal, the defendant did not in any way oppose the above decision

did not defend itself by means of an appeal. At the same time, it is not clear to the appellate body how

the above decision of the Office is to indicate a departure from established practice when in the present case

decision was not the validity of the consent in relation to the dissemination of commercial communications in favor of third

parties

persons assessed. On the basis of the above, the Appellate Body considers that the decision

did not violate the principle of predictability of decision-making, as the Office is stable in its opinions,

any shift in views is not retroactive and is duly justified - especially by the change

applied legal standards.

As follows from the wording of the General Regulation, personal data may be collected and further

processed exclusively for certain, explicit and legitimate purposes and if the processing

based on consent, this must also be given for a specific purpose, with the administrator being that purpose

bound. If the consent is to be valid, the entity must be given the freedom to decide

which processing operations it agrees to and which it no longer does.

The purpose of the legal regulation of sending unsolicited commercial messages is not to unnecessarily burden the networks

electronic communications and the addressee himself by messages about which the user of the device

electronic communication (addressee) is not interested. Although the General Regulation states in Recital 47 that

that the processing of personal data for direct marketing purposes can be considered as processing

carried out for a legitimate interest, those interests may not exceed those of the addressee, and therefore

the authority to send the message must be linked to situations where the addressee can legitimately expect

the possibility that (certain) commercial communications will be sent to him. This will be the case in particular,
when the user has provided his contact details to the trader in connection with the order or another
customer relationship, which Act No. 480/2004 Coll. reflects the provisions of § 7 paragraph 3, which for
meeting the legal requirements allows you to send business messages in opt-out mode. To be
To ensure the legitimacy of possible expectations, the law limits the opt-out regime exclusively to situations
mailings in order to promote their own similar goods or services - because potential
the addressee knows (or at least may be aware of) which traders he is in a customer relationship with,
what offers he has used in the past and what kind of goods or services a particular trader offers.
In the case of dissemination on the basis of consent, the distribution can be conceived in a much broader way, including
the possibility of sending commercial messages for the benefit of third parties, however, it is a commercial disseminator
The communication does not release the user from the obligation to ensure that commercial communications are not sent to
the user which:
cannot legitimately expect. Transparency of mailing on the basis of consent is ensured
precisely through sufficient concreteness and information of consent. The data subject so
he must receive sufficient information on the basis of which he has the opportunity to be completely free
decide for what purpose they will or will not allow processing.
On the basis of the above, the Appellate Body rejects the defendant's argument that the Office
unjustifiably interferes with the accused's right to freely determine the purpose of the processing. Reality,
that there is no transfer of personal data to third parties is also irrelevant here. Submitted
the consent contains only the unspecified statement “(…) and the address itself
or third parties. ”Consent
does not discriminate and therefore does not offer the user the freedom to choose whether to grant consent
only for sending commercial communications concerning own products or services, ie for purposes
to support one's own business activities or to send business messages to third parties
parties whose offer of goods and services may (and in the present case evidently do so)
with a commercial offer of products and services

is) diametrically different from the subject of activity (possible offers) of the actual disseminator itself
commercial communications, ie accused in this case - it is so clear that not only is it not completely
a specifically defined and coherent group of personal data handling operations constituting
the sole purpose of processing personal data, as stated by the accused, but also without further specification
there is no material definition of commercial communications and third parties themselves
a real possibility to find out what messages will be sent to him. The diversity of purposes is then obvious from
legal system, as described above - while disseminating commercial communications for your own
promotion law allows
even without consent pursuant to the provisions of Section 7, Paragraph 3 of the Act
No. 480/2004 Coll., dissemination in favor of third parties is allowed exclusively on the basis of
qualified consent. Furthermore, it is possible to argue for a different business nature of both types
shipments, resp. processing of personal data connected with it. While self-promotion
it is merely an ancillary activity aimed at increasing the sale of the goods offered
and services, the support of third commercial entities is mostly a business activity in itself,
because the realization of the distribution results in the fulfillment of the principle of a paid contractual relationship with the
person concerned
third party. As already mentioned in the introduction to the decision, from the point of view of Act No. 480/2004 Coll.,
as well as the addressee of the commercial communications itself, it is further essential that in the case of
The benefit of third parties is expanding the number of disseminators of commercial communications when responsible
the person for the lawfulness of the dissemination of commercial communications also becomes the customer of the mailing (if
he does not fulfill the
signs of liberation). Related to this are the provisions of § 7 para. b) of Act No. 480/2004 Coll., according to
which, when disseminating commercial communications, is prohibited from concealing or concealing the identity of the sender,
on whose behalf the communication takes place. Subject to the principle of Euroconform interpretation
Directives 2000/31 / EC and 2002/58 / EC require that “a natural or legal person to whom

the order of the commercial communication is in progress, it was clearly recognizable. ”2 It is therefore quite logical
the argument that the commercial communication should be identified by the natural or legal person
whose products, goods or services are promoted by commercial communications. In case of missing marking
a third party for the benefit of which they will be the users of the electronic means of communication
sent commercial messages, it would be virtually unrecognizable and unverifiable for users whether
the consignor in question has (at least mediated) legal means with regard to his person
title to disseminate their commercial communications.
According to the grounds of appeal, the administrative authority of the first instance misinterpreted the opinion
WP29 No. 5/2004 on unsolicited communications for marketing purposes under Article 13 of
Directive 2002/58 / EC, from which he was to conclude on the need to separate consent to shipment
own commercial communications and for the benefit of third parties. In that regard, the appellate body states that
the contested decision does not contain any such interpretation of the opinion. Administrative authority
The Court of First Instance referred to the opinion in question only as a supporting argument in the context of the
the obligation to provide information on the identity of third parties, using the reference word "see also". The team
the appellate body shall at the same time consider as a settled objection that the administrative body of the first
should be limited to references to non-binding opinions,
without duly substantiating his views. As stated above, Opinion WP29 No 5/2004
has only been used as a complementary detailed description of the legal considerations and views
that the administrative authority of the first instance considered the absent information about the third party to be a reason
causing uncertainty in the offer, thus violating the principles of concreteness and transparency
consent. The appellate body then adds to the opinion itself that, in view of the period
its origin, it must be approached with some caution, as it dates back to its beginnings
the emergence of modern European harmonizing legislation in the field of commercial communication
and privacy in electronic communications. However, since 2004 there has been a massive
2 MAISNER, Act on Certain Information Society Services, 1st Edition, C. H. BECK, 2016

electronic development, the widespread use of means of communication and technology, as well as

as well as a number of legislative changes, including the adoption of a general regulation. Although so can be accused

to admit that opinion WP29 No. 5/2004 does not in itself contain an obligation to identify

third parties, this already considers it necessary to specify the goods and services offered

consent requirement3, as the purpose of regulation

is to achieve the sending of only such

commercial communications that the addressee can reasonably expect.

The appellate body thus shares the view of the administrative authority of the first instance that the dissemination

commercial communications for self-promotion and for the benefit of third parties

different purposes of the processing of personal data and therefore the data subject should be allowed to consent

only to such processing operations with which it actually agrees.

Similarly, on the basis of the above, the Appellate Body agrees with the conclusion that in the award

consent to the processing of personal data for the purpose of disseminating commercial communications for the benefit of

third parties should include information on the identity of the third party.

Furthermore, the appellate body dealt with the objection concerning the issue of free expression

consent granted through the Internet application

From the file documentation

it follows that after logging in to the online self-service, a request for consent will be displayed

for business purposes with the accompanying text "Our self-service uses your personal data,

for its full functionality, it is necessary to update the consent to their processing for business

However, it is not clear what functions of the service are to be restricted until consent is given, when

the internet application does not contain such information and is accused of itself in the grounds of appeal

has repeatedly stated that there is no harm to the party if the consent is not given

customer, as the application is still fully available to him. The accused spoke similarly

also within the control of file no. UOOU-06364/18, where she stated: "If the participant does not want to give consent,

click Remind me later and then can use the online self-service without restrictions… "

(see statement of 24 August 2018 ref. UOOU-06364 / 18-61). Furthermore, as follows from Article 7 (3)
withdrawal of consent must be as easy as giving it. A maiori ad
minus, the mere denial of consent must also be at least as easy as his
provision. The text of the pop-up window requesting approval for business purposes
evidently stated that for the (full) functionality of the self-service it is necessary to give consent (see
citation of the text of the application above), while this window could not be closed in any way (eg by clicking
to the cross in the upper right corner, as is customary in similar cases), taking the first
the window level offered only the highlighted option "I agree" and then "I need more
information ", the wording of which, in the opinion of the Appellate Body, does not in any way
that after clicking on it, it will be possible to agree at the end of the subsequently pop-up informative text
temporarily refuse. The appellate body considers such a practice to be misleading and de facto aggravating
refusal to give consent, as the window may actually give the impression that consent for
business purposes is a necessary prerequisite for the use of online self-service
.
Deception is also confirmed by the unjustified "limitation of functions", as well as the fact that
that some of the complainants expressed the sense that they felt compelled to give their consent.
As regards the revocability of the consent, it is apparent from the file that before 25 May
2018, the "new" consent was irrevocable. As the first-instance administrative body correctly assessed,
such consent violates the basic pillars of personal data protection legislation and consents
3 The purpose (s) should also be clearly indicated. This implies that the goods and services, or the categories of
goods and services, for which marketing emails may be sent should be clearly indicated to the subscriber.

granted within a period in which they could not be revoked cannot be considered validly granted.
It is irrelevant whether, from the defendant's point of view, any real damage has been caused
to the data subjects, but the negative consequence - harm - lies in denying the data subjects their
fundamental and one of the most important rights by which they are free to decide on their disposal

with your personal data. Control sp. UOOU-06364/18, as follows from the text of the protocol

on control ref. UOOU-06364 / 18-96, with consent from the point of view of Act No. 480/2004 Coll. no closer

however, reference may still be made to points 21 and 26 of the inspection report, where the inspector

stated that personal data were processed other than fairly and transparently

the accused company also infringed Article 7 (3) of the General Regulation.

In addition, the Appellate Body finds that the inspection protocol is not legally binding because

to assess the fact and to duly substantiate its conclusions is the responsibility of the administrative body in management

administrative material, the file material collected during the inspection, as well as the conclusions

made on its basis can only serve as a basis for decisions.

On the basis of the above, the Appellate Body concludes that it agrees with the administrative view

the authority of the first instance according to which the consents to be granted are being assessed

via an Internet application

, cannot be considered as freely granted and therefore

nor for valid legal reasons for the dissemination of commercial communications.

The appellate body also dealt with the detailed objections - in particular those set out in the addendum

appeal of 10 December 2018 - directed against individual commercial communications, which

dissemination was found to be unlawful by the contested decision and cannot be dealt with

sufficient reasoning alone in general above.

The first of the defendant's objections was directed against the commercial communication of 22 May 2018

sent from a phone number hidden under an alias

. According to

In the opinion of the accused, a factual error was made because the reasoning of the decision is incorrect

the date of the rejection of the next mailing and at the same time the accused considers a screenshot documenting

rejection as inconclusive. It is apparent from the file that the addressee of the commercial communication

sent an e-mail on October 6, 2017 containing an explicit revocation of consent to shipping

commercial communications from the accused and third parties, to the address from which they came the following day

response from the person who signed the addendum commonly used by customer service

accused companies "

And with attached links to the accused's website.

The accused does not in any way dispute the date of sending the message in question, but side by side

the probative value of the image is challenged only by an erroneous entry in the written copy of the decision. Is so

obvious that the accused got acquainted with the described print screen and a mistake in writing

so she could not interfere in any way with her rights. Error of the administrative body of the first

degrees in the incorrectly entered last digit of the year must therefore be considered obvious

incorrectness in the written drafting of the decision, which, however, does not affect the legality

decision. At the same time, the appellate body considers that the argument must be rejected as insufficient

evidence of the screenshot. It is clear from the slide that the user is the e-mail box

he expressed his willingness to withdraw his consent and revoked that consent against the telephone number which the

accused had given

registered in the database together with the name and e-mail address from which the request was sent

to end the mailing. Unsubscribing from unsolicited business correspondence should

in particular, it should be easy and efficient, especially with regard to burdens and invasions of privacy,

which it may represent for the addressee. Pursuant to Section 7 of Act No. 89/2012 Coll., The Civil Code,

it is assumed that everyone who acted in a certain way acted honestly and in good faith. You can't

thus a priori assume that one acting entity pretends to be another and therefore would require

should be based on a degree of reasonableness of doubt. Similarly

to a phone number

also follows from Article 12 (6) of the General Regulation. The degree of necessary reasoning is, in his opinion

appellate body must be sought in connection with the existence of the possibility of damage to rights

and the freedoms of beneficiaries. It is thus irrelevant whether the addressee of the commercial communication

the withdrawal of the consent process has been "properly completed" subject to proper identification

the person withdrawing the consent (in this case by communicating the PUK code or the SIM card serial number),
because even without these data, the accused had the necessary range of identifiers to eliminate
the possible existence of a reason for doubting the identity of the person acting for the purposes of the appeal
consent. In contrast to the commercial interests of entrepreneurs, legal entities, there is a contrast
constitutionally protected privacy of an individual who seeks to prevent further interference, and therefore
if there were no other facts significantly increasing the risk of misidentification of the actor, it was not
reasonable to insist on the addition of additional identifying information. The existence of such facts
at the same time, it does not follow from the file documentation and the accused did not try to prove them or in any way
did not disappoint. Similarly, no reasonable doubt was found to suggest that
that the addressee of the commercial communication in question would address the revocation of consent to another entity,
than they claim, ie the accused.
To the business communications of 13 May 2018 and 12 July 2018 sent
user phone number
the administrative authority of the first instance stated that the user
has repeatedly refused to receive commercial communications via e-mail of
On February 25, 2013, the accused reassured him in response that he had all marketing approvals
canceled as of November 12, 2012. Application of the opt-out regime in the sense of § 7 paragraph 3 of the Act
No. 480/2004 Coll. cannot be enforced and the consent granted through the application
on 1 June 2018 does not meet the criterion of freedom of award (see above). The appellate body therefore
even in this case, he agrees with the conclusion of the administrative body of the first instance.
on
As for the business message sent on July 25, 2018 from the telephone number
telephone number
with the loan offer, the appellate body states that the possibility of appeal
consent and rejection of further distribution must be particularly easy. No legal norm at the same time
does not specify the manner or form of the necessary expression of will, and therefore the disseminator should respect any

legally approved expression of will. Formal-administrative restrictions by the disseminator
preventing or impeding the exercise of the rights of the user of the electronic contact (subject
data) are inadmissible and cannot affect the validity of the user's legal action, namely
even if the user is familiar with the restrictions. In particular, it is not possible to restrict the possibility of application
rights through a communication channel that is explicit for communication with customers
designed and commonly used, with the surprise that a customer care worker who
The defendant must undoubtedly be properly acquainted with the products, services and procedures requested
to withdraw the consent and assured the user of the telephone number concerned that by
system has disagreed and the user will no longer be approached regarding promotional prices
and offers. About the common acceptance of disagreements through chat communication with employees
customer care, and thus the purposefulness of the argumentation in this business statement testifies
eg also acceptance of disagreement by the same communication channel of the telephone number user
, whose validity of the statement of disagreement, however, the accused does not challenge.

on

In the case of a business message sent on August 29, 2018 from a telephone number
number
the defendant challenged the decision because
the commercial communication should have been sent on the basis of consent given through
internet self-service
and the defendant added that argument by stating that
the complainant is not a participant in the electronic communications service in relation to the person concerned
phone number. Due to the fact that the commercial communication in question contained
with offer

third party offer, the appellate body refers to the arguments above where it agreed with the conclusion
administrative authority of the first instance that the consent does not meet the necessary parameters to be able to be

considered to be a proper legal title authorizing the distribution of commercial communications in favor of third parties

persons, resp. processing of personal data for this purpose. In addition, reference may be made to

the conclusion about the absence of free will in granting consent in the Internet application

because how

the accused states in the dissolution, the consent was to be granted via the Internet

self-service. As regards the question of the participation of the services in the light of the telephone in question

number, it must be stated that Act No. 480/2004 Coll. primarily protects electronic contacts

communication, and therefore it is irrelevant which specific user is currently using the contact.

It is essential that the disseminator of commercial communications must have a valid legal title

due to electronic contact, which was not properly documented by the accused. How are you

moreover, it is clear from the records charged to the telephone number in question, as is apparent from the complaint,

The phone number belongs to a legal entity, and therefore it is natural for the current user to be certain

phone number may change over time.

On the basis of all the above, the Appellate Body rejected the defendant's arguments. At the same time

does not see in the decision any reasons that make it incorrect or illegal, as well as

nor does it find any errors in the process which preceded the adoption of this decision.

Although, given the seriousness of the defendant's conduct, an imposition could also be considered

stricter administrative punishment, with respect to the prohibition of reformation in peius decided by the appellate body

as stated in the operative part of this decision.

Lessons learned:

Pursuant to the provisions of Section 91 (1) of the Act, this decision shall be challenged

No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

Prague, March 6, 2019

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman

10/10