

UOOU-00802/21

The inspection of this company was started on the basis of the Office's Inspection Plan for 2021, namely in the matter of compliance with the obligations arising from Act No. 480/2004 Coll., relating to the sending of business communications using electronic means, and further in the matter of compliance with obligations in the processing of personal data according to Regulation (EU) 2016/679 in connection with direct marketing. As part of this inspection, complaints filed against the sending of commercial communications and complaints filed in connection with the exercise of the rights of subjects according to Regulation (EU) 2016/679 were also examined. In the field of sending commercial communications, the inspection, both in general and in relation to the complaints filed, aimed at finding out how personal data (e-mail address, telephone number) are obtained, how commercial communications are disseminated, how the user of the given electronic contact is informed about this, and how the conditions for the dissemination of commercial communications are met. In the area of processing of personal data for the purposes of direct marketing according to Regulation (EU) 2016/679, the legal title, scope and period of processing of personal data for this purpose of processing, as well as how the information obligation towards data subjects is fulfilled in this context, and how customers are enabled to implement the rights of the data subject, especially with regard to the right to object to processing for direct marketing purposes (according to Article 21 of Regulation (EU) 2016/679). Direct marketing is a tool that companies use to support their business activities and maximize profits. It is a certain form of advertising that is targeted at specific people. If direct marketing is implemented by means of electronic means, i.e. in particular by means of e-mail, SMS/MMS messages, the relevant provisions of Act No. 480/2004 Coll. must also be observed when sending such commercial messages, as in this area it is a special regulation to Regulation (EU) 2016/679 and this law sets out the exact conditions under which commercial communications can be disseminated by electronic means. 6 paragraph 1 letter f) Regulation (EU) 2016/679. When purchasing a product or service, the customer can reasonably expect that the merchant will send him a similar offer. The commercial interest, prevailing in this case over the interest of the customer, is at the same time corrected by the additional obligations of the trader as the administrator of personal data. The administrator must fulfill the information obligation set out in Article 13 of Regulation (EU) 2016/679, which must also include information on the data subject's right to object according to Article 21, paragraph 2 of this Regulation against the processing of personal data for direct marketing purposes. If the data subject raises this objection, the personal data may no longer be processed for this

purpose (this is the so-called opt-out principle, which is also expressed in § 7 paragraph 3 of Act No. 480/2004 Coll.). An administrator who uses direct marketing on the basis of a legitimate interest must also have processed the appropriate balance test. As part of the control, it was found that the controlled person processes the personal data of its customers for marketing purposes either on the basis of a legitimate interest according to Article 6 paragraph 1 letter f) Regulation (EU) 2016/679 for so-called direct marketing, or processes the personal data of its customers based on consent pursuant to Article 6, paragraph 1 letter a) Regulation (EU) 2016/679, in the case of marketing for the benefit of third parties or when processing operational and location data for marketing purposes. In relation to the scope of personal data processing for direct marketing purposes, the inspection found that personal data is processed to an excessive extent, especially with regard to invoicing and payment data, communication with the controlled person and cookies. In this context, it should be noted that after evaluating the submitted objections, the inspectors complied with the objection in this area and billing and payment data and communications related to the service provided were recognized as data processed in accordance with direct marketing. However, when it comes to data obtained in the form of cookies, it still applies that this data can only be processed based on the consent of the data subject. Furthermore, it was established that the controlled entity processes the personal data of its customers for the purposes of direct marketing for a longer period than is necessary for the stated purpose, when this period was up to three years after the end of the customer relationship. In this context, it should be noted that the controlled person has already taken measures to shorten this period to six months. As a justification, she stated the possibility of being contacted for a reasonable period of time even after the end of the contractual obligation, which is also a legitimate interest according to general practice not only in the telecommunications industry, and in particular the possibility of offering customers a retention offer that enables business entities to "keep the customer", and at the same time it can be beneficial even for the customer himself, when he can receive an offer that could be interesting for him. From the point of view of the Office, this period is already acceptable, it corresponds to common practice, as well as future regulation in the framework of e-privacy, which also has a limited period for sending commercial messages in its proposal. However, it continues to apply that if the data subject no longer wishes to receive offers from the controlled person, they can simply refuse them at any time (object to processing for this purpose), while the controlled person informs the data subjects of the ways in which this can be done. administrator in connection with the information obligation according to Articles 12 and 13 of Regulation (EU) 2016/679, no violation was found. The controlled person provides information primarily within the framework of the Personal Data Protection Policy document, which is

published on the website of the controlled person, and where all information regarding the processing of personal data for marketing purposes is described in detail and clearly. At the same time, this information is also provided directly when concluding a customer relationship, either electronically on the website, via the customer line or in person at the store. The controlled person also fulfills obligations in relation to the rights of data subjects. No infringement was generally found in this respect. Only in relation to one complaint, i.e. only within the framework of an individual request of a data subject in connection with an objection to the processing of personal data for direct marketing purposes, the given subject should have been satisfied and further processing for this purpose should no longer be carried out. In this case, however, it was only an error where further identification of the data subject was required even though the latter objected to the processing of personal data for the purposes of direct marketing from the e-mail address to which the commercial communications in question are sent, and therefore this further identification for this purpose should not have been requested by the controlled person and should have been granted to the subject in this sense. It was stated that the controlled person generally complies with the obligations and conditions of sending commercial messages by electronic means. Doubts were noted only in the case of individual complaints, when in one case there was a technical error, and in one case the commercial message was already sent after the given customer had previously refused further sending of commercial messages. relevant administrative procedure.

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