OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00E8KDW *

Ref. UOOU-03916 / 19-49

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent pursuant to § 10

and § 152 para. 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided pursuant to § 152 para. b)

Administrative Procedure Code as follows:

Appeal of the accused, company XXXXXX, against the decision no. UOOU-03916 / 19-42 of

March 2020, is rejected and the contested decision is upheld.

Justification

Definition of things

Administrative proceedings in the matter of suspicion of committing an offense pursuant to § 11 par. 1 let. a) point

1 of Act No. 480/2004 Coll., On certain information society services and on the amendment of some

laws, was initiated by the notification of the Office for Personal Data Protection (hereinafter

delivered to the accused company XXXXXX (hereinafter referred to as the “accused”), on September 23, 2019.

for the commencement of the proceedings, the file material was collected as part of the inspection in accordance with the law

No. 255/2012 Coll., Control Rules, file no. UOOU-01284/17 made on September 7, 2017 to

September 4, 2019. The basis of the proceedings were further

and other suggestions from complainants for referral

unsolicited commercial communications which, due to time constraints, could no longer be inspected

to classify.

By decision no. UOOU-03916 / 19-42 of 6 March 2020 (hereinafter referred to as the "Decision")

The Office, as an administrative body of the first instance, found the accused guilty of committing an offense pursuant to

Section 11

paragraph 1 (a) a) point 1 of Act No. 480/2004 Coll., because in cases specified in more detail

in points A-D) of the operative part of the decision disseminated commercial communications within the meaning of § 2 letter f)

of the Act

No. 480/2004 Coll. without a valid legal title, thereby violating the obligation set out in § 7 para. 2

Act No. 480/2004 Coll. A fine of

6,000,000 CZK.

1/10

He accuses the accused and the amount of the imposed fine. She thus objected to the decision

decomposition. It was delivered within the legal deadline and at the same time it is clear to what extent

also for what reason the accused decides. The appellate body thus states that it considers it

for timely and proper.

Decomposition content

The accused points of their decomposition are further divided into letters A) - F). Closer to the individual points

states the following:

A) The accused first argues that the decision is unreviewable, its reasoning is

contrary to Section 68 (3) of the Administrative Procedure Code and is internally contradictory. In that regard, it stated that the

Office in

In relation to the method of proving consents, the defendant states in the decision that the method of proving

consent depends entirely on the accused, and does not require a double opt-in method for the accused,

nor documenting call recordings. At the same time, however, he found (without stating other permissible methods

proof of legal titles) consents to the sending of commercial communications evidenced by the accused as

unprovable, as the accused did not use the double opt-in method in obtaining them, resp.

did not keep recordings of telephone calls. The reasoning should therefore contain contradictory ones

conclusions, and it is not clear why the Authority found the consents submitted unprovable, nor

what other means of proving consent are permitted by the Office.

The objection that such acquisition and storage should also have remained unresolved recordings of telephone calls would be in conflict with the principle of minimizing personal data according to Article 5 (1) (a) (e) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on free movement repealing Directive 95/46 / EC (General Data Protection Regulation).

B) The findings of fact made by the Office in the decision are incomplete and incorrect because Office on the basis of failure to provide (superfluous) required documents accused to a sample of 1% e-mail addresses from the consignment assessed by the Office concluded that the accused had not proved legal titles for sending commercial communications for the remainder of the entire mailing in question (ie to 459 523 e-mail addresses), which was taken into account in determining the fine as aggravating circumstance.

The accused states that on 8 June 2017 she submitted a database (within the scope of the legal title to the distribution, legal title to the processing of personal data, the scope of processed personal data data and a database of rejected consents), including documents proving the customer relationship (where consent was not the legal title of the mailing), and a detailed description of the acquisition processes and registration of consents through calls to the accused's headquarters and through web form and how the consents are entered into the CRM database. At the same time, it states that it is possible assume that the majority of the addressees of the consignment of 7 June 2017 were its customers, however, based on the decision to shorten the retention periods of personal data, the data on their purchase cleared. The Office should not have addressed the legitimacy of such a procedure, if not without it considered another purposeful. At the same time, the decision does not state how long she has had and could keep the accused's personal data. At the same time, the principle of limiting storage was met, which cannot be attributed to her. As for the selected sample of 1% of contacts from the day On June 7, 2017, most contacts the existence of a legal title for sending business communications never contradicted and filed a complaint, and therefore the presumption of the absence of a title for the whole

shipment based on a 1% sample should be in breach of the obligation to prove the facts on

level of material truth.

C) Legal conclusions of the Office contained in the decision on the absence of authorization of the accused

to send commercial communications in the cases specified in the statement I. decision are

incorrectly. The Office came to the wrong legal conclusion on invalidity and unprovability

consents for sending commercial communications. The Office further incorrectly assessed the position

accused of sending commercial communications through the contractual partners of the accused,

having concluded that the accused is responsible for such mailing as a disseminator of commercial communications,

without this concept having any basis in law or in the reasoning of the decision.

The accused divides the objections of defects of incorrect legal assessment of the case into 4 points:

1) First, it deals with the provability of the consent granted through

forms on the website, where he reiterates that the Office was willing to recognize only the so-called

double opt-in consent when in accordance with the guidelines of the Working Group established under

Article 29 stores session information in the range of an IP address when consent is given

equipment, or cookie identifier, but was not submitted by the Office

never called. At the same time, it states that it is ready to submit them subsequently

in addition to decomposition. It did so when it was subsequently delivered to the Office

memorandum dated 31 March 2020 together with an annex - .xlsx table sorted by 3

columns containing a total of 2,251 e-mail contacts, each with the appropriate

"IP address" and "CRM consent processing date". Accused further

disagrees with the Office's view that it would consent to the sending of commercial communications

they lost strength after a few months without reaction and the message could then be

perceived as annoying. The validity of the consent is not in terms of time

restricted by law or by consent itself. The accused spoke last

on the issue of freedom and voluntary consent through the web

forms. If the Office describes the form of the form, where there is a check box for consent

automatically pre-filled, it may have been a bug in the system for a fee

at a specific time of the local survey, not at the time of collection

personal data.

2) The provability of the consent given during the telephone call again

states that it complies with the WP 29 Guidelines. Call center operators have

follow an internal instruction to enter the consent into the database

only after a proper explanation of the possible use of the contact details to the caller.

At the same time, recording and storing recordings should be contrary to the principle of minimization.

3) Regarding the nature of the communication sent, the accused states that some communication is not possible

considered as a commercial communication. There was a time correlation between demand

and reactions and these were not sent out from the contacts used for the campaigns, but

from the contacts of individual employees. The answer to the customer's request is not possible

considered a commercial message, and it is not decisive that there is an answer

more general or automated nature.

4) The accused insists on sending commercial communications through partners

on the opinion that Act No. 480/2004 Coll. does not define or modify the term "disseminator"

the duties or responsibilities of the person who orders the mailing from a third party

business communications. Therefore, as the contracting authority, it cannot be held responsible for the distribution.

On the contrary, liability would impose disproportionate demands on it and would be contradictory

with the principle of minimization.

D) The accused does not agree with the amount of the fine. At this point, he reiterates that the Office on the basis of

failure to provide legal title to a sample of 1% of e-mail addresses from the distribution assessed by the Office

concluded that the accused had not proved the title for sending the communication to the remainder of the entire mailing (ie

to 459 779 e-mail addresses). However, there was no evidence beyond the test sample

carried out and therefore cannot be evaluated. As regards the addressed recurrence of the communication,

considers that this was not the case for 18 addressees, but in fact only one
(XXXXXX domain administrator). Finally, he considers that he cannot be considered a professional
in a field where extensive processing of personal data takes place. Its main activity is
vehicle trafficking, with the distribution of commercial communications being only one side issue
activities. As an assessed circumstance, this could only be considered in cases where it is
The main activity of a merchant is marketing or providing online services.

E) The decision was to interfere with the legitimate expectations of the accused. In this context
lists certain decisions of the Office in which a lower fine was imposed, which should not be
obvious why a different decision was made in the case of the accused.

F) The Office should finally proceed in conflict with the provision of the decision
the basic principles governing the administrative bodies contained in Title II. of the Administrative Procedure Code
contrary to the principle of economy in the sense of § 6 para. 2 of the Administrative Procedure Code, imposed on the accused
disproportionate synergy requirements that would be disproportionate in time and money
burden charged. The main part of the reasoning of the decision on the basis of which the Office found
accused of committing an offense is based on alleged failure to comply with these
disproportionate demands on the accused.

Specifically, the accused states that the Office should have demanded proof of legal titles for 4,600
e-mail addresses, in the manner specified by him - call records, confirming
e-mails and to the contacts obtained in connection with the sale by proving the purchase contract, invoice
or similar documents. The Office did not specify that it would consider sufficient evidence
session data. At the same time, however, it states that the process of exporting data from the system is not automated
and it would take a lot of time. Moreover, the Office did not even have to specify what specific information
therefore, the defendant could not, by its substance, comply with the requirements. Always
provided co-operation to the required extent. The accused is therefore convinced that the procedure
For her, the Office meant a disproportionate time and financial burden contrary to the principles of § 6
paragraph 2 of the Administrative Procedure Code.

On the basis of the above, the accused proposed that the President of the Office challenged

annulled the decision in its entirety and stopped the proceedings, or annulled the decision and returned the case

for a new hearing.

Assessment by a second instance body

The Appellate Body examined the contested decision in its entirety, including the

which preceded its publication, and came to the following conclusions.

Ad A) Dissemination of commercial communications by electronic means is at the national level

regulated primarily by Act No. 480/2004 Coll., which is a national response to the Directive

2002/58 / EC of the European Parliament and of the Council on the processing of personal data and the protection of privacy

in the electronic communications sector and Directive 2000/31 / EC of the European Parliament and of the Council

on certain legal aspects of information society services, in particular electronic

trade, the internal market (e-commerce directive). In particular the directive

2002/58 / EC then defines the protection of personal data as well as legitimate legal interests

persons in connection with electronic communications, specifically regulating rights in Article 13

and obligations in disseminating commercial communications. The legislator's obvious effort is to limit proliferation

the addressee - whether a natural or legal person - unsolicited in advance and specifically

commercial communications without being able to reasonably expect them. At the same time, there is a clear emphasis on

transfer of responsibilities to disseminators, transparency of such possible activities and minimization

financial and time costs of the addressee, as this is a communication that he did not request and in his

as a result, they often only bother him. However, legitimate interests must be taken into account in a similar way

electronic network operators and other similar service providers, as he stated

The Municipal Court in Prague in the judgment no. 14 A 242 / 2018-40 of 7 April 2020: “in general

sending unsolicited commercial messages is undesirable because the sender transmits the crucial part

the cost of a marketing campaign to someone else. Distribution costs are mainly borne by

Internet service providers and therefore also their recipients (time or financial). Moreover

sending them can disrupt the proper functioning of interactive networks, congestion can occur
mail-servers, etc. However, sending unsolicited commercial messages is in the area
marketing is widely used because the cost to the sender of such messages is minimal and him
the message sent may reach a large number of addressees. "

These are the ideological starting points that must be had when interpreting Sections 2, 7 and 11 of the Act No. 480/2004 Coll. in mind, as an interpretation that denies their meaning and purpose cannot be accepted.

From the construction of § 7 and § 11 of Act No. 480/2004 Coll. then it clearly follows that The recipient's expectations in the possibility of receiving unsolicited commercial communications are based primarily by consenting to the sending of commercial communications. In compliance with the Euroconform principle interpretation of national law, resp. in this case compliance with Directive 2002/58 / EC is necessary also interpret the consent in terms of consent to the processing of personal data, as the consent is they must meet similar requirements by sending commercial communications. This specifically follows both from recital 17 of Directive 2002/58 / EC and its normative part in Art. (f), according to which the "consent" of the user or subscriber corresponds to the consent of the data subject under the Directive 95/46 / EC. 'With the repeal of Directive 95/46 / EC, reference is made here to Regulation (EU) 2016/679, in accordance with Article 94 (2) thereof. Article 7 (1) of Regulation (EU) 2016/679 then provides: "Where processing is based on consent, the controller must be able to that the data subject has given his or her consent to the processing of his or her personal data. ' clearly established, the burden of proof lies solely with the trustee data, resp. disseminators of commercial communications. In addition, as follows from the definition of consent in Article 4 (11) Regulation (EU) 2016/679, in order for the consent to be relevant, it must be demonstrated that it is free, concrete, informed and unambiguous expression of the will by which a specific data subject, resp. the addressee of the commercial communication, gives permission to process his personal data (dissemination closer specified commercial communications). Similarly, the provisions of Section 7, Paragraph 3 of Act No. 480/2004 Coll. it requires, inter alia, the sending of a commercial communication with the ability to sufficiently demonstrate its origin customer relationship in accordance with the rules for personal data protection, resp. Regulation (EU)

2016/679.

To prove the legal title to the dissemination of commercial communications in relation to individuals the addressees were repeatedly called upon by the accused. The Office gave examples of this in the usual way the means used to demonstrate the existence of a consent or customer relationship.

Due to the fact that for the entire duration of the control, resp. administrative proceedings accused provided only a description of the individual procedures for obtaining and maintaining electronic contacts, resp. consents, together with information on which of the described procedures was the electronic one data obtained, we can only state that the consents of specific addressees were not sufficient documented. Although she repeatedly stated that she was able to provide data on sessions at completion Web form recipients, but this represents a month of work for her, she needs first and foremost recall that the control procedure began in September 2017, lasted almost 2 years, followed by administrative proceedings in the first instance, while the accused submitted these alleged facts only in the framework of supplement to the appeal of 31 March 2020. However, the Appellate Body finds that neither EXCEL a table documented as part of the supplement to the breakdown of the granting of valid consent by specific addressees it does not prove in any way. It does not in any way imply that the actual holders of the e-mail in question at that time have given their consent to the sending of commercial communications, as the case may be about the submitted IP addresses, or those consent from a specific addressee (customer) they do not clearly prove (these are often identical IP addresses and not an identifier final addressee). In addition, the Appellate Body shall suspend the relevance of the data submitted, because how it is from the database compared to the IP addresses found during the scan as addresses belonging to the scope of the accused, some alleged consents should have been granted precisely from hers addresses (e.g. XXXXXX).

As far as the alleged consent procedures are concerned, even these do not guarantee the existence and validity consent. As it turned out from the local survey ref. UOOU-01284 / 17-58 of October 8, 2018, is it is possible for the call center operator to record the relevant consent in the CRM system

processing of personal data and sending commercial communications, although the caller will state explicit disagreement. Alternatively, as happened in the test call during the local investigation, records data for a person completely different from the person calling. The same applies in the case of a trial purchase in a second-hand car shop, when checking as customers consent to marketing purposes refused, but consent was written to the system.

In principle, anything that makes it possible to establish the facts of the case can serve as evidence. As the law does not stipulate how consents are to be proved, the principle of free assessment of evidence applies. However, as stated above, it must be proof clearly conclusive, while Act No. 480/2004 Coll. in conjunction with Regulation (EU) 2016/679 shifts the burden of proof in this case to the disseminator of commercial communications, ie the accused. With respect that the Office does not and cannot know how the accused intends to substantiate the consents, an official procedure cannot be described as incorrect if the accused is called only by a general summons to substantiate the facts along with information by what means the facts usually take or other recommendations, without specifying exactly what is to be presented.

The need to substantiate the consent, including that the information submitted so far is insufficient, however, the accused was notified both during the inspection and administrative proceedings, resp. from the course procedure clearly followed. At the same time if the accused fears that he would take some of the activities has not been able to comply with the principles of personal data processing, especially in decomposition repeatedly explicitly referenced principle of personal data minimization, the Appellate Body refers to the principle of administrator responsibility. Determining the purpose, means of processing, as well as the fulfillment of all follow-up duties is the responsibility of the administrator, who is responsible for his decisions and procedures. It is therefore up to him to properly evaluate his activities, but this does not deprive him in any way obligations to be able to demonstrate consent.

On the basis of the above, the Appellate Body did not find the contested decision internally contradictory, as it cannot be concluded that the Office, contrary to its assertion, would only respect

his recommended way of proving the facts. No provable evidence

was not submitted during the inspection or during the administrative procedure, which was an essential starting point for decision.

If no consent in the proceedings was substantiated, the Office's finding in question was challenged

about the fact that despite the consent given it is necessary to take into account the preferences of the people

Over time, business messages change after a long breakthrough can be perceived as

bothersome, has no relevance for the assessment of the case. In general, the Office has

true, albeit to show a lack of interest in further commercial communication in the case of a pre-granted

consent serves primarily the possibility of its revocation. However, it is clear from the decision that the Office at

he did not draw his conclusions and the statement was only informative and informative.

The same applies to the findings made during the local investigation, when it was found that

filling in the web form, the marketing consent field is pre-ticked, where

this does not constitute an active action by the recipient. Although he pointed this out

and stimulus

Ref. UOOU-01284 / 17-61 of 17 March 2019, from which it can be assumed that this was not the only

however, it is a recurring error during the local investigation, as the accused states

on a statement of an informative nature without significance for the conclusions reached. After all, neither

the accused does not substantiate the submitted document in the context of the cooperation of 23 April 2018

the actual situation at the time of collection of the personal data in question.

Ad B) In addition to the above, the Appellate Body recalls that according to the operative part of the decision

point I, letter A) the accused was found guilty only in the scope of 4,344 e-mail messages, ie

to the extent fully substantiated by the file material. It is therefore not true that the Office will grow up

to the conclusion that the accused did not prove the legal titles for the whole mailing. In this context, it was only

taking into account the high error rate of the sample, taking into account the high number

addressees and the systematic nature of the error can indeed be considered a real number of those affected

addressees for much higher.

In connection with the anonymization of part of the database during the inspection, thereby
the accused justifies the impossibility of proving legal titles in relation to some addressees
commercial communications, the appellate body agrees with the opinion of the administrative body of the first instance.
Although it is not clear whether the data the defendant had to know was necessary to destroy
in view of the subject matter and scope of the inspection as well as the summons made by the Office
for purposeful reasons or negligence, it did not relieve her of any burden of proof. Its scope
at the same time, the inspection was clearly not limited to specific complainants, but was
conceived more generally. Therefore, the requirements of the administrative body of the first instance had to be such that
it was possible to find out how business messages are sent, as is generally the case
obligations in sending business messages and processing related personal data are complied with
data. So it was not just about resolving specific complaints.

Ad C) On this point, the accused challenged the legal assessment by the Office. Controversy in points
C.1) and C.2) concerns the conclusions on the provability of consents to the sending of commercial communications.
Given that these are issues very close to the issues addressed in the introduction to the assessment of decomposition
by the appellate body in principle dealing with its point A), the appellate body has already dealt with them within this
framework.

Ad C.3) The accused considers that some communications considered by the Office to be commercial
The communications were, in fact, individual communications from the workers accused with the addressees of these
communication, which cannot be considered a commercial communication.

Commercial communication is a provision of § 2 letter f) of Act No. 480/2004 Coll. defined as
all forms of communication, including advertising and solicitation to visit the website, designated
to the direct or indirect promotion of goods or services or the image of the business of a person who is an entrepreneur
or performs a regulated activity. Legislation concerning the conditions for the dissemination of trade
the communication is then contained in § 7 of the Act on Certain Information Society Services.

The question whether it is a communication, ie, in principle, information content transmitted between

there can be no dispute. Similarly, the position of the accused as an entrepreneur clearly follows from § 420
et seq. Act No. 89/2012 Coll., Civil Code. The question therefore remains whether it was
the message is intended to directly or indirectly promote goods or services or an image. Although it is an advertisement
only one of the possible forms of commercial communication, the Supreme Administrative Court in interpreting the term
stated in the judgment no. 5 As of 48 / 2009-76 of 22 July 2010 as follows: "… in the case of
the assessment of whether the complainant's conduct fulfills the characteristics of the dissemination of the advertisement is not
his own
internal motives or sympathies for the undertaking in question to which the complainant referred. Others
In other words, whether the disseminated message is decisive in assessing the conduct of the person disseminating a
particular message
fulfills the characteristics of advertising according to § 1 paragraph 1 of the Advertising Regulation Act, not internal motives
The people who spread the advertising message. "With this perspective, it is also necessary to approach business
communication pursuant to Act No. 480/2004 Coll., as concluded by the Supreme Administrative Court in the judgment no. 1
As
136 / 2019-38 of 16 June 2020. Definition features defined in § 2 letter f) of the Act
No. 480/2004 Coll. is thus assessed solely from an objective point of view, regardless of what the accused does
states. At the same time, it is not decisive whether the expected result in the form of real
services or image has arrived.

As is well known and the accused herself admits, her main business is
is vehicle trading. If in communications sent electronically to the addressees
offered its services related to the sale of a car, then undoubtedly the aim of such a communication
was, among other things, its economic benefit. It is irrelevant that these messages were sent by staff
accused, and not an automated system, or from what number the messages were sent. How
According to the contents of the file, some advertisers have even explicitly stated in advance that they do not wish to be
contacted by any second-hand car shop. Obviously, this is unsolicited business
message, resp. commercial communication in the sense of § 2 letter f) of Act No. 480/2004 Coll.

Ad C.4) In connection with the accused's assertion that Act No. 480/2004 Coll. expressly
does not define the person of the disseminator, he must be given the truth. However, it is not true that he does not regulate the law
the obligations of the person who orders the distribution of commercial communications from a third party, as this also applies the person is their disseminator. The concepts of dissemination and (de facto) dispatch are not identical, between which also distinguishes Act No. 480/2004 Coll., while their meaning and meaning can be clearly deduced.
As is clear from the above-cited judgments of the Municipal Court in Prague ref. 14 A 242 / 2018-40
and the Supreme Administrative Court ref. 1 As 136 / 2019-38, in interpreting the provisions of § 2, 7 and 11
Act No. 480/2004 Coll. care must be taken to preserve the meaning and purpose of themselves,
as well as the European directives on which the law is based. The appellate body refers in particular to this
on the argument of the Municipal Court in Prague Ref. 14 A 242 / 2018-40, where the court under paragraph 45
concludes: "And so the court must agree with the defendant that the person who disseminates the commercial communication
by electronic means, not only their direct consignor but also the person
who initiated their dispatch, gave orders to it or also profited from it. If the goal
The legislator was primarily protecting the addressees of commercial communications from harassers
marketing actions, the interpretation of the rules in question must be consistent with that intention.
The opposite interpretation, ie that only the actual consignor is responsible for the dissemination, would make the legal one in question
standards are inherently ineffective because in today's digital world there would be a real proliferator

A business message could very easily relieve you of your responsibility by sending it
commissioned another person, typically the one who would be outside the reach of the Czechs
public authorities. In addition, one cannot disregard the fact that the law on certain services
information society does not talk about the obligations of the person who sends the commercial message, but
the one who spreads it. And so it is necessary to consider as disseminators of commercial communications electronic
not just the entity that actually transmits the commercial messages "at the click of a mouse",

but the body which initiated their dissemination to the final addressees. "

The responsibility for disseminating commercial communications can thus be invoked against anyone who disseminates commercial communications, whether or not they do so on their own. Corresponding to this then the liability cannot be transferred by contract, as any contract will have effect only between parties. Disseminating business messages legally is thus not only a factual obligation the sender, but also the person who issued an order or others for the purpose of their promotion for such dissemination initiated it in an appropriate way. If the entrepreneur decides to spread the business message through another entity, it acts at its own risk, as it is primarily its duty to ensure the lawfulness of such conduct, as confirmed by the case-law conclusions outlined above.

Ad D) The defendant argues that the amount of the fine should have been incorrectly set. Introduction assessment of this point, the appellate body refers to the first paragraph of settlement of point B) decomposition. Taking into account the high error rate in the sample of the advertising campaign of June 8, 2017 and the evident systemic error of the accused is considered by the Appellate Body to be completely On the place. As regards the objection relating to the addressed repetition of the trade a reference in which it considers that it should have been related to only one user should refer to the meaning and wording of Act No. 480/2004 Coll. This is because it does not make protection possible by possible interference with rights of a specific individualized person, but protects electronic contacts as such. Addressable repetition can therefore be applied in the sense of repeated sending of business messages to the same e-mail addresses, although it is possible that they are only managed as a result one person. The fact that she is accused by a professional in the field because of her activities extensive processing of personal data takes place must also be taken into account. No processing personal data (ie e-mail addresses or telephone numbers of designated or identifiable persons) commercial messages cannot even be sent, so the connection is clear. Due to the necessary coherence of this activity with the main activity (ie vehicle trafficking),

complexity and scope of the related services offered and the amount processed

personal data, as evidenced, among other things, by the very high number of addressees in a single

advertising campaign of June 8, 2017, then it is not fundamentally relevant that it is only an activity

minor.

Ad E) The amount of the sanction imposed should not correspond to factually similar cases. To

the appellate body points out that none of the cases referred to is similar.

First of all, the mere fact cannot be taken out of the context of the whole procedure and decision

found repetitive repetition, professionalism in the field or other partial aspects and on that basis

compare the amount of the fine imposed. An essential distinguishing feature among all in decomposition

the above-mentioned decisions and the present case is the subject of proceedings, since in this case

The case did not concern proceedings in relation to individual complaints from the addressees of commercial communications,

but

it was an inspection, resp. administrative proceedings focusing on the entire advertising campaign and dissemination

commercial communications by combined obligations in general. Within this framework, extensive was found

errors of a complex nature, while the detected number of sent commercial messages

without a legal title was also much higher than in the mentioned cases. Moreover, it is not possible

the property of the accused also be omitted, because not only is the sanction supposed to perform a repressive function,

but, above all, it has to act as a deterrent to the accused and the public for the future

and preventive effect.

The appellate body states that the amount of the sanction imposed is within the legal limits

and has been duly substantiated. At the same time, the Appellate Body emphasizes that despite finding an error

of a systematic nature, in a large number of cases, was chosen by the administrative body of the first instance

the amount of the sanction at half the statutory rate. It is by no means clear that the amount of the fine would be in favor

accused of liquidation, which she does not even object to.

Ad F) The adequacy of the procedure of the Office, resp. authority of the Office to request proof

In some facts, the Appellate Body primarily refers to the above, in particular

settlement of point A) dealing with the need to prove consent to the sending of commercial communications.

It is clear from the file that the accused was called upon to cooperate only when necessary

sufficient time. These have been several times

extended. The accused also testifies to the adequacy and effort to meet the legitimate interests of the accused

the fact that it was not required to prove all approximately 460,000 commercial communications

from the advertising campaign carried out, but only a 1% sample containing, among other addresses

complainants.

After an overall examination, the appellate body did not find the decision illegal, either

found no errors in the procedure which preceded the issuance of the decision. Based on all

The appellate body therefore rejected the applicant 's arguments and ruled as such

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, August 26, 2020

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)