

The inspection was initiated on the basis of 7 initiatives and its subject was compliance with the obligations arising from Act No. 480/2004 Coll., on certain services of the information society, relating to the sending of business communications using electronic means. The commercial communications in question, which were sent via e-mail messages, contained offers for discounts on consumer and electronic goods and also encouraged visitors to visit websites designed to directly support the offered goods and services. On the basis of a comparison of the claims of the complainants, the audited person and also through verification as part of a local investigation, the Office concluded that the audited person committed a violation only in the case of sending a commercial message to two complainants, and that was because it did not respect the customer's request to refuse to send commercial messages. Further commercial messages should not have been sent to these users, even in the case of further purchases. Commercial communications could only be sent on the basis of a legal title of consent (§ 7 paragraph 2 of Act No. 480/2004 Coll.), but no longer on the basis of a customer relationship according to § 7 paragraph 3 of Act No. 480/2004 Coll. In this context, the inspected person was advised to add the option to refuse the sending of business communications to the process of entering the order, even before the field confirming the sending of the order. In relation to other conditions that must be observed when sending commercial communications, the Office assessed that in the case of two commercial communications, the condition set out in § 7 paragraph 4 letter b) of Act No. 480/2004 Coll., as these messages did not contain information about the sender on whose behalf the communication is being made. The audited person was advised to clearly mark all commercial communications sent to the benefit of the online stores that it operates, indicating that the audited person is the operator of the stores in question, so that the addressee is informed about the identity of the sender directly from the sent commercial communication. Audited person filed an objection against the part of the control finding related to one e-mail address (to one user), which related to a period of 12 days, after which, based on the request of the user of the e-mail address in question, it was removed from the marketing database of the controlled person, while the controlled person considered this time to be quite reasonable. In this letter, the inspected person also stated that he had made the correction as recommended during the inspection. The Chairperson of the Office rejected the objection submitted by the inspected person and stated that inspection practice tolerates a certain period of time required for the implementation of unsubscribing from sending commercial messages, which is approximately one week, however, specific circumstances must also be taken into account. She agreed with what was stated in the audit report, i.e. that the period of 12 days, after the

rejection of which the e-mail address in question was unsubscribed from commercial communications, is not long at all and could be considered even with regard to a large system with a large number of customers for sufficient. On the other hand, however, which must be considered essential, it was necessary to take into account that the controlled person sent commercial messages to the e-mail address in question every 3 days, and this circumstance had to be adapted in the form of a more flexible response to the refusal of further sending of commercial messages. With regard to the claim of the audited person about the rectification carried out, the chairperson of the Office said that this is irrelevant from the point of view of the objection settlement procedure, however, it will be taken into account in the further procedure of the Office. For this action, the Office imposed a fine of CZK 3,000 on the audited person, taking into account the fact that the audited person corrected the alleged misconduct and also took measures that should prevent such misconduct.

#### Recommendation:

If commercial messages are sent to one's own customers, it is necessary to follow the conditions set out in § 7 paragraph 3 of Act No. 480/2004 Coll. The customer must above all be given the opportunity to refuse the use of these contacts for sending commercial messages (relating to their own similar products or services) at the time of obtaining their contact data in connection with the sale of a product or service. This can be implemented, for example, by ticking the box for refusing to send commercial communications or by clearly stating that this request (rejection) can be entered, for example, in the note field, etc.

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