OFFICE FOR PERSONAL DATA PROTECTION

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UOOUX00FW55S

Ref. UOOU-04020/22-13

DECISION

The Chairman of the Office for the Protection of Personal Data as an appellate authority competent under Section 152, paragraph 2

of Act No. 500/2004 Coll., Administrative Code, decided according to the provisions of § 152 paragraph 6 letter b) of the Act No. 500/2004 Coll., Administrative Code, as follows:

Decomposition of the accused,

,

, against the decision of the Office for Personal Data Protection

no. UOOU-04020/22-7 of December 15, 2022, is rejected and the contested decision

confirms.

Justification

AND.

Definition of the matter

/1/ Proceedings for suspicion of committing a misdemeanor pursuant to § 11 paragraph 1 letter a) point 1 of the Act No. 480/2004 Coll., on some services of the information society and on the amendment of some laws,

conducted by the Office for the Protection of Personal Data (hereinafter "the Office") with the accused,

(hereinafter "accused"), was initiated by the issuance of order no. UOOU-04020/22-3 dated November 9

2022 (hereinafter the "order"), which was delivered to the accused on the same day. She was charged with this order found guilty of committing an offense under § 11 paragraph 1 letter a) point 1 of Act No. 480/2004 Coll.

and a fine of CZK 40,000 was imposed on her. The protocol was the basis for issuing the order

on control no. UOOU-04617/21-19 of September 30, 2022 taken by the Office according to the law
No. 255/2012 Coll., on inspection (inspection order), as part of the inspection carried out at the accused, including
of file material collected as part of this inspection, while against the said
no objections were filed to the control protocol. However, the accused objected to the order on November 16
2022 objected with a timely objection, which made the order in accordance with § 150 paragraph 3 of the Act
No. 500/2004 Coll., Administrative Code, canceled and the administrative body of the first instance continued the subject
matter
management.

/2/ The result of the ongoing proceedings was the issuance of decision no. UOOU-04020/22-7 dated
December 15, 2022 (the "Decision"). By him, the accused was once again found guilty of the crime

offense according to § 11 paragraph 1 letter a) point 1 of Act No. 480/2004 Coll., which she committed by
that it repeatedly sent commercial communications by electronic means, in the sense of § 2 letter F)
of Act No. 480/2004 Coll., the subject of which was the offer of webinars regarding news
, and it:

along with a link to the website

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the message "training offer

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whereas the addressees of the above-mentioned business communications did not give the accused consent to the sending

commercial messages, and are not customers or registered users of the sender. Accused of that

breached the obligation set out in § 7 paragraph 2 of Act No. 480/2004 Coll., i.e. used the details

electronic contact for the purpose of disseminating commercial communications by electronic means without

users of electronic addresses would give prior consent to this. For the reasons stated therefore

a fine of CZK 40,000 was imposed on the accused by decision.

/3/ However, against the decision, which was delivered on December 15, 2022, the accused filed

December 28, 2022 timely and proper decomposition.

II.

Decomposition content

/4/ In the breakdown, the accused stated that the imposed fine is disproportionately severe with regard to

the seriousness of the committed act and all the circumstances of the case. The authority, when imposing a fine,

in the opinion of the accused, he should not have taken into account all the circumstances of the case and the person himself

accused nor any of the mitigating circumstances. In addition, the accused reminded that she

the managed database reads around

, its control after the initial one

offenses also took place in a manual way, and thus the misconduct that concerns 3 e-mails

address ranges in order

versus a managed database. It is for the development of her business

presentation of the offered services through business communications is key.

/5/ But the accused is aware of her previous wrongdoing, and that is precisely why she committed the series

corrective actions and improvements in the field of commercial communications, such as a change of administrator

internet services, decommissioning of the company

from database to application

automatic logout and sending an apology. She also cooperated fully during the inspection

and provided all documents available to her that were requested.

/6/ It should therefore be obvious that the accused took a more responsible approach to checking the functioning of the

database

and sending commercial messages. And it was in the context of these circumstances that she expected from the Office

consideration of her approach and remedy. Moreover, the accused believes that it is not serious

an offense that did not cause harm to anyone, and therefore the sanction should be rather preventive

than a repressive character.

/7/ Furthermore, the accused objected to the Office's argument stated in the first paragraph on page 6

decision expressed in the sentence: "It should also be noted and taken into account that only three were filed

complaints, which does not mean that the number of addressees addressed would with regard to the method of acquisition

of contacts, could not be higher", which he considers to be an unsubstantiated claim, i.e. mere speculation

and violation of the presumption of innocence. The office could also use one of the mitigating circumstances, namely

that the accused herself in two cases removed the harmful consequences and thus prevented the sending

of repeated business communications and assisted the Office in clarification.

/8/ Therefore, the accused proposed to cancel the decision and decide that the deposition will be waived

administrative penalty, or a fine is imposed at the very bottom of the rate or the item is returned

for a new discussion.

III.

Applicable law

/9/ Provisions § 2 letter f) Act No. 480/2004 Coll. reads: "For the purposes of this Act, the following shall be understood: ...

f) commercial communication means all forms of communication, including advertising and invitations to visit

websites intended to directly or indirectly support goods or services or image

the enterprise of a person who is an entrepreneur or performs a regulated activity."

/10/ Provisions of § 7 paragraph 2 of Act No. 480/2004 Coll. reads: “Electronic contact details

can be used for the purpose of disseminating business messages by electronic means only in relation

to users who have given their prior consent."

/11/ The provisions of § 11 paragraph 1 letter a) point 1 of Act No. 480/2004 Coll. reads: "The legal entity shall

commits an offense by...a) mass or repeated dissemination by electronic means

business message…1. without the consent of the addressee.'

/12/ Provisions of § 11 paragraph 2 of Act No. 480/2004 Coll. reads: "A fine may be imposed for an offense up to:

...b) CZK 10,000,000, if it is an offense according to paragraph 1 letter and)."

IV.

Assessment by the Appellate Body

/13/ On the basis of the submitted breakdown, the appeals body reviewed the contested decision in its entirety

scope, including the process that preceded its issuance, and first dealt with argumentation

accused.

/14/ The appellate body first of all states that cooperation within the control is the duty of the controlled

person (see in particular § 8 and § 10, paragraph 2 of Act No. 255/2012 Coll., on control) and providing the necessary

cooperation cannot therefore be perceived a priori as a mitigating circumstance, or reason for dropping from

imposing a penalty. Furthermore, as it must also be noted, the accused generally pointed to acceptance

series of corrective measures. Specifically, however, she only noted a change of internet administrator

services and also stated that the addressee, who used the automatic logout system, had

to stop sending commercial messages, his data was removed from the database, and also

she recalled sending an apology letter. However, acceptance cannot be inferred from this

appropriate corrections, and thus also the fact that the commercial communications in question actually took place

only occasionally. This fact is also confirmed by the fact that one of the e-mail addresses was

business message sent even ten times. The above mentioned statement mentioned in the first

the paragraphs on page 6 of the decision cannot therefore be considered completely unfounded speculation,

however, as it should also be noted, it had no influence in the imposition of the sanction, which
both the statement of the decision itself and the justification of the amount of the sanction testify (see p. 6, last paragraph
decision). As it is also appropriate to point out at this point, from the point of view of privacy protection
of the persons concerned, i.e. the fundamental right protected by the legislation in question, is completely
it is irrelevant how many percent of records from the subject database were affected by the error. At the same time
the appellate authority states that in the event of a finding of repeated violation by the accused
(see Office order no. UOOU-00666/21-3 of February 12, 2021 following the protocol
on control no. UOOU-02478/20-48 of 12 January 2021) the sanction should have effect
punitive, not merely preventive, which precludes considerations of waiving the imposition of a sanction. On top of that
the fact that the business activities of the accused are immanently connected with the management of voluminous
database and with the extensive distribution of commercial messages and accused therefore, as far as the distribution is
concerned
business communications, can be considered a professional who should pay particular attention to legality
of their activities, is rather an aggravating circumstance.

/15/ Regarding the fine imposed above, the appellate body refers to the defendant's reasoning
decisions (in particular regarding the number of unsolicited commercial messages sent, the rate
invasion of privacy and that for an offense with the same legal qualification, i.e. according to § 11
paragraph 1 letter a) point 1 of Act No. 480/2004 Coll., consisting in the illegal dissemination of more than thirty
commercial communications, were accused earlier, by order no. UOOU-00666/21-3 dated
February 12, 2021, a fine of CZK 80,000 was imposed), with which he identified. In this context then
particularly reminds that the imposed fine could, in accordance with § 11 paragraph 2 letter b) of the Act
No. 480/2004 Coll. up to CZK 10,000,000. It was therefore measured at the lowest possible limit
rates, which the appellate body considers reasonable in view of the above and no
not deviating from the standard applied by the Office. The imposed fine also corresponds
with the financial situation of the accused, and therefore does not have a liquidation nature.

/16/ Therefore, the appellate body rejected the argument of the accused and did not find it after an overall review no errors causing illegality in the procedure of the first-level administrative body of the Office decision.

/17/ For all the above-mentioned reasons, the appellate body therefore decided as stated in statement of this decision.

Lesson learned:

this decision according to the provisions of § 152, paragraph 5 of the Act Against No. 500/2004 Coll., Administrative Code, dissolution cannot be filed.

Prague, February 9, 2023

M.Sc. Jiří Kaucký

chairman

(electronically signed)