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On the basis of the control plan for 2018, the Office carried out an inspection, the subject of which was compliance with the obligations set out in Regulation (EU) 2016/679 in connection with the processing of personal data for the purpose of direct marketing by STUDENT AGENCY, k.s., and in this context also compliance with Act No. 480 /2004 Coll. when sending commercial messages. The inspectors found that the inspected person processes personal data for the purpose of its own direct marketing based on two legal titles. In relation to registered subscribers of news from the controlled person's website, the legal title is consent in the sense of Article 6, paragraph 1 letter a) Regulation (EU) 2016/679. In relation to persons who are already customers of the controlled entity, the legal title is a legitimate interest in the sense of Article 6 paragraph 1 letter f) of this regulation. The auditors found that although it can be generally agreed that the subject processing of customers' personal data in the given scope and for the purpose of own marketing is necessary to fulfill a legitimate interest that is not outweighed by the rights of the data subjects, the audited person did not properly document the performance of the balance test. With regard to the fact that the given processing is necessarily connected with the sending of business communications, for which the controlled person is evidenced by a legal title according to § 7 paragraph 3 of Act No. 480/2004 Coll., and with regard to the riskiness of the given processing in this matter and possible intervention to the rights, however, the auditors came to the conclusion that this error did not cause the invalidity of the given legal title, as the legitimate interest is presumed by law in the given case. The auditors found a violation of Article 26 of Regulation (EU) 2016/679, because a transparent agreement defining their shares in the responsibility for fulfilling the obligations set out in Regulation (EU) 2016/679. The controlled entity did not have an updated Privacy Policy and did not inform the data subjects about the essential elements of the arrangement between the joint controllers, thereby violating the obligation set out in Article 26(2) of Regulation (EU) 2016/679. Therefore, by his actions, the controlled person further violated the provisions of Article 13, paragraph 1 letter a) Regulation (EU) 2016/679, as it did not provide transparent and unambiguous information on the identity of the personal data controller. The Authority imposed measures on the controlled person to eliminate the identified deficiencies consisting in the obligation to enter into an agreement between the joint controllers, to adjust the information obligation so that it meets all the requirements of Art. 13 of Regulation (EU) 2016/679 and properly document the performance of the balance test. the inspectors discovered that some commercial communications were sent on the basis of the legal title specified in § 7, paragraph 3 of Act No. 480/2004 Coll., i.e.

on the basis of a customer relationship. In several cases, if the addressee was not a customer or had previously refused to send business communications, the controlled person violated the obligations of § 7, paragraph 2 of Act No. 480/2004 Coll., i.e. to use electronic contact details for the purpose of disseminating business communications by electronic means only in relation to users who have given their prior consent. The Authority found that the controlled person violated the obligations set out in Article 13 and Article 26 of Regulation (EU) 2016/679 and Article 7(2) of Act No. 480/2004 Coll. .The Office imposed on the inspected person for violation of Act No. 480/2004 Coll. a fine of CZK 7,000. The inspection was conducted by inspector Ing. Josef Vacula. Recommendation: If more administrators are involved in determining the purpose and means, they are joint administrators. These administrators are obliged to enter into an agreement among themselves, in which they define their shares of responsibility and, in particular, of handling requests from data subjects. The administrator must inform data subjects about this agreement. Regardless of the content of such an agreement, however, the data subject may address his request to any of the joint administrators.

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