

UOOU-04631/19

The inspection of this company was initiated on the basis of 15 complaints about the sending of unsolicited commercial messages. With regard to the fact that some addressees also complained about the non-respect of their request to end the processing of personal data in connection with direct marketing, the subject of the control was, on the one hand, compliance with the obligations arising from Act No. 480/2004 Coll., on certain information society services, concerning with the sending of commercial messages by electronic means, on the one hand, compliance with the obligation arising from Article 21 of the General Regulation in relation to direct marketing. By analyzing the individual messages that the complainants provided in their complaints, the Office came to the conclusion that it is clearly a business communication within the meaning of § 2 letter f) of Act No. 480/2004 Coll., as these communications contained offers of services related to the creation of modern websites with an emphasis on the promotion of services and at the same time also contained links to websites where these services are offered. By analyzing the sending e-mail addresses and IP addresses, the inspectors found that the sender of the commercial messages in question is the inspected person. The inspected person cooperated during the inspection, however, considering that the alleged consent to the sending of commercial messages was secured only on the basis of a telephone inquiry, not in any other detectable way, and also considering that most of the complainants stated in their complaints that even previously refused to send business communications, the controlled person thus committed a violation of the provisions of § 7, paragraph 2 of Act No. 480/2004 Coll., as it did not provide evidence that it had the consent of the addressees to send business communications. Regarding the other conditions for sending business communications specified in § 7, paragraph 4 of Act No. 480/2004 Coll. The Office noted that the condition of marking [§ 7 para. 4 letter a) of Act No. 480/2004 Coll.] was fulfilled by the inspected person. On the contrary, the condition specified in § 7 paragraph 4 letter b) Act No. 480/2004 Coll. was violated by the controlled person, as not one of the commercial communications contained the appropriate designation of the person on whose behalf the communication is being carried out. Also for the condition specified in § 7 paragraph 4 letter c) Act No. 480/2004 Coll. the Office noted a violation, in the case of users of five e-mail addresses, since the commercial communications sent to them by the controlled person did not include a valid address to which it is possible to directly and effectively send information that the addressees do not wish to be sent further business messages. Considering the fact that some complainants stated that they requested the controlled person to delete their personal data, the subject of the control was also

the relevant provision of Article 21 of the General Regulation, regarding the right to raise an objection in relation to direct marketing, as well as the related compliance with the information obligation according to Article 12 of the general regulation. It is evident from the inspection findings that at the time of the mailings, the information obligation was not sufficiently fulfilled by the inspected person in accordance with the provisions of Article 12 of the General Regulation. In the course of the inspection procedure, this obligation was rectified for some websites, for other websites, which were also concerned with the sending of commercial messages, this obligation was rectified by the inspected person shortly after the end of the inspection procedure. In the case of a request by one subject pursuant to Article 21 of the General Regulation, the Office found a violation of Article 21, Paragraph 3 of the General Regulation, in connection with the data subject's request for the deletion of his personal data in relation to direct marketing, when his personal data was processed by a controlled person even after repeated requests to delete personal data and not to send further business communications, for a period of several months. In the relevant administrative proceedings, for violation of Act No. 480/2004 Coll. a penalty of CZK 20,000 was imposed on the inspected person. Considering that the rectification of the alleged violation of the relevant provisions of the general regulation was carried out by the audited person either within the framework of the audit procedure or immediately after its completion, the auditor waived the imposition of remedial measures and also the imposition of a sanction in this context, as he found the sanction imposed for a violation of the law No. 480/2004 Coll. for enough. Recommendation: In this context, the Office points out that the issue of direct marketing (sending business messages) is affected by both Act No. 480/2004 Coll., on certain information society services, and the general regulation on the use of contacts that are personal data. Act No. 480/2004 Coll. governs the conditions for the dissemination of commercial communications by electronic means, and it is therefore necessary for the disseminator of such commercial communications to comply with these conditions. The General Regulation then applies to this issue on a general scale, where the provision on the obligation to provide information (Art. 13, 14) and the provision on the right to object to processing for direct marketing purposes (Art. 21) can be used in particular. A violation can occur, for example, when the data subject objects to processing for direct marketing purposes, but subsequently receives another commercial message to his electronic contact. It can then be a violation of Article 21, Paragraph 3 of the General Regulation, since it is clear from the sent commercial communication that the controller further processes personal data (i.e. the addressee's electronic contact), as well as a violation of Section 7, Paragraph 2 of Act No. 480/ 2004 Coll., since the distributor does not have the appropriate consent for sending commercial messages, or the addressee refused to send commercial

messages.

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