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RESOLUTION

The Office for Personal Data Protection (hereinafter "the Office"), in its capacity of the competent administrative authority pursuant to Article 64(1) of the Act No. 110/2019 Coll., on personal data processing, and to Article 58(1)(d) of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), has decided on 17 May 2021 as follows:

The case concerning the suspected company [redacted] company identification number [redacted] established at [redacted] which allegedly have committed an offence pursuant to Article 62(1)(c) of the Act No. 110/2019 Coll., on personal data processing. The company, despite a request from [redacted] of 17 March 2020 for erasure of his personal data, contacted him anew on 4 May 2020 via e-mail containing yet another marketing communication. The company, by this action, has allegedly breached the data subject´s rights laid down in Article 17(1)(c) of the Regulation (EU) 2016/679, specifically the right obliging the controller to erase personal data without undue delay concerning the data subject, if this particular data subject objects to the processing pursuant to Articles 21(1) and 21(2),

is pursuant to Article 65 of the Act No. 110/2019 Coll., on personal data processing, **discontinued the proceedings.**

Reasoning:

The Office received on 17 January 2021 via the IMI system, a complaint lodged originally with the Office for Personal Data Protection of the Slovak Republic by [redacted] concerning an unlawful processing of his personal data in relation to sending of marketing communications. The complainant stated in his complaint of 5 May 2020 that he, on a not-specified day, made an order for goods at the e-shop [redacted] On 17 May 2020, at 17:29 hrs, he obtained an e-mail message from the customer service of this e-shop informing him that the ordered item was dispatched to him on 16 May 2020. On the same day, the complainant received a letter from the e-shop [redacted] file number [redacted] signed by [redacted] informing him that the ordered item was sold out and the order could not be accommodated. With regard to these two contradicting

pieces of information the complainant had lost confidence in the given e-shop and had withdrawn his order on the very same day at 20:13 hrs and simultaneously asked for erasure of his personal data provided to the company in relation with the order. He sent the request for the order withdrawal as well as for the erasure of his personal data to the customer service to the e-mail address [redacted] He backed his statements by a copy of the given e-mail communication. On 20 March 2020 the complainant received an answer form the customer service, sent from the address [redacted] saying that the company respected his wishes and would refrain from any sending of offers. The company added further that database of offers was set up in advance, i.e. it was created yet before the complainant´s request for erasure was filed. The company also apologized for the case, if still the complainant would in the coming days obtain a marketing offer. Despite the complainant´s request for erasure, the suspected company sent him electronically marketing offers of the e-shop [redacted] whereas the last offer was sent by e-mail on 4 May 2020 at 12:38 hrs. A copy of the marketing offer was attached as well.

As per Article 21(2) of the Regulation (EU) 2016/679, where personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing. Pursuant to paragraph 3 of the mentioned article, where the data subject objects to processing for direct marketing purposes, the personal data shall no longer be processed for such purposes. Pursuant to Article 12(3) of the Regulation (EU) 2016/679, the controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. However, also in this case, the controller shall inform the data subject of such extension within one month of receipt of the request.

With regard to the aforementioned facts, the administrative authority asked on 15 April 2021 the suspected company for cooperation in accordance with Article 31 of the Regulation (EU) 2016/679 and requested the processor´s agreement with the company [redacted], established at [redacted] Slovak Republic, company identification number [redacted] which provides to the e-shop [redacted] the customer service. The administrative authority also asked, when the suspected company was informed of the complainant´s request for erasure of his personal data and what measures the suspected company had taken in relation to the complainant´s request.

In reaction to its request, the administrative authority received on 28 April 2021 a statement in which the suspected company explained that the request for erasure of personal data, or, respectively, the discontinuation of sending of the commercial offers to [redacted] from the e-mail address [redacted] was obtained on 17 March 2020, whereas on 20 March 2020 the [redacted] operator entered this request to the system for further handling. On 27 May 2020 the physical removal of the complainant´s personal data from the direct marketing database took place. The suspected company stated further that it was discovered during a checkback that yet, several marketing communications were sent to the complainant due to a technical mistake within the system.

The suspected company also stated that after in relation to this failure, it had conducted a revision of the entire process and applied measures preventing repetition of similar mistake.

Moreover, the suspected company informed that customer data are processed over the period covering the order processing plus delivery and subsequently also over periods related to the warranty claims purposes as well as periods during which buyers may apply their claims or a competent supervisory body could perform an inspection. Following the suspected company, these personal data are processed on legal grounds for the purposes of observing an agreement and of the suspected company´s legal interests, however not longer than for three years as of the filing of an order. The information for customers as to the processing of personal data are available at the website [redacted] In relation to the complainant´s request, the company stated that his personal data had been removed from the demarketing database, but it could not erase all personal data as they were processed in connection with his order on the basis of a legal interest of the suspected company whereas they should be erased automatically after three years as of the filing of the order.

The suspected company also attached the agreement on processing of personal data closed on 25 May 2018 with the company [redacted] which provides for the suspected company customer service. It also attached the processor´s technical and organizational measures of 25 May 2018 as well as a sample of the electronic newsletter footer where a customer may unsubscribe reception of electronic newsletters. Finally, the invoice and the delivery confirmation related to the complainant´s order was attached.

The administrative authority has assessed the suspected company´s conduct and declares that the suspected company, after the complainant´s sending of his request for erasure of 17 March 2020, removed on 20 March 2020 the complainant´s personal data from its marketing distribution list and informed him thereof by e-mail on the same day. The suspected company could not accommodate the complainant´s request for erasure of his personal data due to the fact that the formerly closed agreement related to the complainant´s order is subject to Article 6(1) of the Regulation (EU) 2016/679 as they are necessary for compliance with the suspected company´s legal obligations and for the purposes of its legal interests. Due to a technical failure on the suspected company´s side, marketing offers (catalogue and newsletter) were sent to the complainant even after his personal data had been removed from the distribution list, whereas subsequently the suspected company took measures preventing repetition of such an event.

On the basis of the material collected in the file, the administrative authority, in accordance with Article 65 of the Act No. 110/2019 Coll., discontinued the proceedings without initiating proceedings concerning an infraction as only a single mistake occurred on the suspected company´s side and with respect to the significance and extent of the breach of the protected interest that was affected by the action and also with regard to the conduct of the suspected company that, immediately after the case happened, it remedied the unlawful situation. It is obvious that the objective that could have been achieved by performing a proceeding, was reached even so.

Instruction: This resolution shall, pursuant Article 65 of the Act No. 110/2019 Coll., only be recorded in the file. In accordance with Article 76(5) of the Administrative Code, this resolution cannot be appealed.

Prague, 17 May 2021