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NEWSLETTER SLOVAKIA

SETTING FOUNDATIONS

Issue:
March 2022

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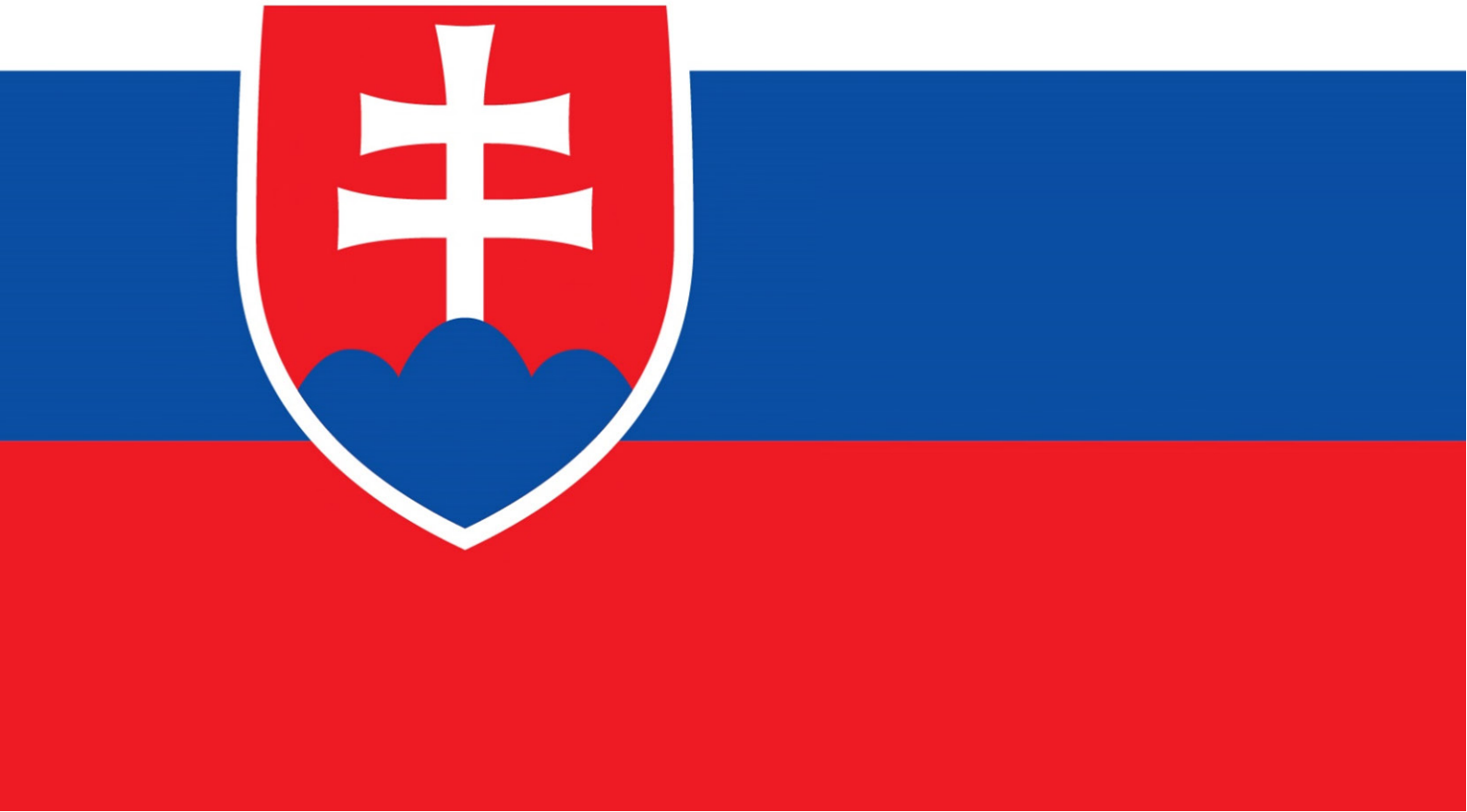

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→ Law

New act on electronic communications – changes in marketing regulations

As of 1 February this year, with the exception of certain provisions, a new Act No. 452/2021 Coll. on electronic communications entered into force, which is a transposition of the European directive known as the Electronic Communications Code. The aim of the said directive was to simplify electronic communications, but also to increase the protection of consumers – users of the Internet and other telecommunications networks. In addition to new regulation of digital infrastructure, the Act also brings changes in personal data protection, as it also regulates the so-called direct marketing in the form of sending unsolicited emails or SMS messages – colloquially, spamming. Given the needs of our clients, in this article, we will discuss the new marketing regulation and GDPR.

Direct marketing and unsolicited communication

Under the Act, direct marketing is "any form of presentation of goods and services, whether written or oral, sent or presented through a publicly available service directly to one or more participants or users." This means that if you offer products or services to someone by email or text message, for example if you send an advertising email to someone, you are engaging in direct marketing. The new Act however does not directly define unsolicited communication. However, it can be understood as addressing a customer or potential customer by electronic mail, which under the law is a text, voice, sound, or image message sent over a public network that can be stored on the network or on the recipient's terminal equipment until the recipient picks it up.

Duties and restrictions of direct marketing depending on type of recipient

According to the original legislation defined in Act No. 351/2011 Coll. on Electronic Communications, it was allowed to call or use automated systems for marketing purposes only with the prior consent of the recipient, with the conditions for granting prior consent being determined by the GDPR regulation. There were only two exceptions to this rule, namely cases where the contact information for the delivery of electronic mail was obtained by the trader in connection with the sale of goods or services to recipients, as well as cases of contacting recipients who were legal entities.

The new Act also regulates the question of when direct marketing of products and services is permitted and what the obligations associated with it are, depending on the type of recipients of the direct marketing. Under the new regulation, these can be divided into three groups, for which different conditions apply.

The first group are the customers of a trader who carries out direct marketing, provided that their contact details have been obtained in connection with the previous provision of similar services and goods. In this case, consent to the sending of e-mails is not required, but there is an obligation to instruct the customer when obtaining the contact details how the data will be used, i.e., that it will also be used for marketing purposes. At the same time, it will be necessary to enable the customer to refuse the use of their data for direct promotional purposes, quickly and easily, at the time of acquisition and with each promotional message delivered. It is prohibited to send electronic mail from which the identity of the sender or the address to which the recipient may send a request to stop receiving such messages is unknown.

The second group are recipients-entrepreneurs, i.e. natural persons (sole traders) or legal entities whose contact information is published. Consent is not required for the promotion of products and services through direct marketing for this group either. There is also an obligation on the direct marketer to allow these recipients to refuse

unsolicited communications at any time and easily. The sending of emails from which the identity of the sender or the address to which the recipient may send a request to cease sending such unsolicited mail is unknown is also prohibited.

The third group are recipients-natural persons who are not entrepreneurs and are not customers of the direct marketer. For these recipients, explicit consent given in advance is required for direct marketing, i.e. before sending an e-mail or making a call with the content of direct marketing. **The wording of the Act further implies that consent cannot be obtained implicitly**, i.e., without an active expression of the will to consent. This is the case where the voice on the recording says, for example, "By continuing the call, you agree to [...]." In fact, the Act expressly prohibits the use of automated dialling and communication systems without human intervention, telefax, electronic mail and short message services for the purpose of obtaining prior consent. If the recipient were contacted in this way for the sole purpose of obtaining consent, this would, in effect, again constitute unauthorised contact for the purposes of direct marketing.

Prerequisites of consent to the sending of electronic communication and its revocation pursuant to GDPR

For the purposes of the new Act, demonstrable consent is deemed to be consent that meets the requirements of a specific regulation, which is Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, i.e. the GDPR. In accordance with this Regulation, it must be a freely given, specific, informed and unambiguous expression of will, by which the data subject consents to the processing of personal data concerning him or her in the form of a declaration or an unambiguous confirmatory act.

In addition, the new Act also imposes an obligation on the person to whom such consent has been given to retain the consent for at least four years after the consent has been withdrawn. When obtaining consent, the person carrying out direct marketing is obliged to indicate how the consent can be easily withdrawn.

The person against whom consent has been withdrawn shall also be obliged to confirm the withdrawal of such consent and shall thereafter be obliged to keep the withdrawal of consent for a period of at least four years from the withdrawal of consent. Such person is of course also obliged to cease direct marketing to the recipient who has withdrawn consent.

Direct marketing in form of telephone call

Direct marketing in the form of a telephone call will be prohibited under the provisions of the new Act only if the recipient includes a telephone number in the new list of telephone numbers that cannot be used for direct marketing. Such a list will be established by the Office for the Regulation of Network Industries and Postal Services on its website.

However, the provisions of the new Act concerning unsolicited communications by telephone calls will not come into force until 1 November 2022.

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→ Business

Digitalisation of accounting as of 1 January 2022

The following text contains several novelties resulting from the amendment to the Act on Accounting valid as of 1 January 2022. The most important change for the business public is the **digitalisation of accounting**.

The act enables the digitalisation of accounting documents and the electronisation of the process of receiving, processing, and saving of documents in the electronic environment and the usage of artificial intelligence for data search and processing. The amendment equals accounting records in paper form and electronic accounting records in case of meeting the following requirements:

- **credibility of its origin:** proving the issuance or receipt of the accounting record (shall be ensured e.g. by the internal control system of accounting records, i.e. by appointing persons responsible in the process of accounting records processing),
- **integrity of its contents:** proving that the contents of accounting records were not changed (shall be ensured e.g. by means of the electronic data exchange without the possibility to interfere with the contents of accounting records),
- **legibility**: the contents of accounting documents must be legible to the human eye.

The requirements as to accounting documents were also adjusted by the introduction of digitalisation, whereby it is not necessary to state the signature of the person responsible for the booking of the respective accounting transaction and the designation of accounts (initial account assignment), to which the accounting transaction shall be booked, on the document.

In order to simplify the digitalisation processes, the act allows the transformation of accounting records from paper form to electronic form by means of scanning. The former exclusive duty to perform the transformation by means of guaranteed conversion has been dropped. The scanning output is a scan in the format PDF, PNG, JPEG, JPG, TIFF. Such accounting record will be deemed provable, and it is not necessary to store it in the original paper form. The transformation can be performed only once, i.e. in case we transform e.g. an invoice from paper form to electronic form by scanning, it is not possible to transform it back to paper form by printing it out. The transformed accounting record must be provable, i.e. the credibility of its origin and the integrity of its contents must be ensured.

The amendment to the act does not change the storage period of accounting records. However, the amendment introduces the possibility to store accounting records in paper form after their transformation only in electronic form without the need to archive the original accounting records in paper form. The accounting entity can decide to store the accounting documentation either in paper form or in electronic form (optical disk, USB flash drive, memory card, hard disk drive, cloud, etc.). The electronic storage of accounting documentation requires regular backups, protection of the data carrier from physical damage or cyberattacks.

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