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Consumer communication - Aggressive commercial practice and data protection

Traders, in the broadest sense of the word (retail sales facilities, banks, insurance companies, leasing companies, etc.), as one of the methods of offering their products and/or services, often use advertising media, such as various kinds of fliers, catalogues, greetings cards, etc., which they distribute both to the consumers, already beneficiaries of their services, and the potential customers. There are also cases when the traders contact the consumers by phone, fax, e-mail or some other remote communication media.

In most cases, this is accomplished against previous consent of the persons addressed by the traders.

Subject to the provisions of the Consumers Protection Act, such type of operations is deemed to be the aggressive commercial practice, which is prohibited and subject to punishment.

The Act specifies the clear criteria, subject to which the existence of the aggressive commercial practice is established in each individual case. However, there are certain types of commercial practice which are, regardless of the circumstances surrounding each individual case, deemed to be aggressive. The most frequent forms of such practice are visits to the consumers' homes, without their previous consent, as well as the frequent contacts of the consumers, contrary to their will, by phone, fax, e-mail or other remote communication media. In such situations a trader may be punished for the offense by a fine in the amount of RSD 300.000 to RSD 2.000.000.

The issue of a correct relationship in correspondence with the consumers is closely connected with observance of the privacy rights.

The Personal Data Protection Act provides that the marketing activities shall be preceded by the so called informed consent of the consumers. The informed consent means the obligation of the data handling person or the companies obliged to follow the Personal Data Protection Act to, prior to the consumers' consent to have their personal data processed for marketing purposes, inform the consumers of:

- 1) their identity: the name and headquarters address;
- 2) purpose of collection and further processing of the data;

- 3) the way the data will be used;
- 4) the identity of the person or the type of the entity to be using the data;
- 5) willingness of providing the data and having them processed;
- 6) the consumer's right to recall his/her consent to the data processing, and the legal consequences in case of the recall;
- 7) the consumers' rights in case of illegal processing of the data;
- 8) other circumstances which, if not told to the person to whom the data relate, would be deemed contrary to the scrupulous conduct. Only after obtaining of this information, the consumers may provide their legal written consent to the personal data processing. The written form, in this specific case, means that the consumers sign the consent which shall contain all the elements specified by the law. Scanned copies of the signed documents or use of the e-signature are excluded.

The exception is data collection through on line applications, in which case it is permitted to post the information on the web application and the consumers shall, by a click on the specified box confirm that they agree to the contents of the information, i.e. their personal data processing.

Tradesmen, banks, insurance companies, leasing companies, etc. are legally obliged to keep internal records on the personal data base and to carry out certain procedures before the Commissioner for public importance information and personal data protection. The Commissioner pays special attention to the control of application of the organizational and technical measures for the purpose of the personal data protection from the loss, destruction, illegal access, change, announcement and any other abuse, as well as to defining of the obligations of the persons working on the data processing, in terms of confidentiality of the data.

Acting contrary to the Personal Data Protection Act is incriminated and may result in prohibition of the personal data processing and fines in the amount of up to RSD 1.000.000,00 for each committed offense. Besides the penal liability, the traders and the financial institutions not applying this Act risk their business image and their reputation damage.

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