



KEY NEWS IN ELECTRONIC COMMUNICATION EFFECTIVE FROM 1 JANUARY 2022

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The electronic communications market is very dynamic, and the existing legislation was outdated in many aspects. However, on the first day of January, two important amendments to the law in this area came into force. Below is a summary of some of the major developments.

Deemed delivery now applies to communications between private parties via data mailboxes

As of 1 January 2022, based on the amendment to the Act on Electronic Acts and Authorised Conversion of Documents, the rule that a message (document) is delivered on the 10th day after it arrives in the recipient's data box (the so-called "fiction of delivery") now also applies to messages delivered between private parties.

So far, the fiction of delivery has only applied to messages served by courts, authorities or other public agencies. Until now, fiction of delivery did not apply to documents served by private parties. If the data box holder (the authorised person) does not log into the data box, the message will be deemed to have been delivered on the 10th day following the date it was actually delivered to the data box.

The rule will be the same for all parties who have a data box and who have not blocked the possibility of delivering documents from a private data box. It will therefore apply to everybody: businesses, non-businesses, individuals and legal entities.

In practice, this means that if, for example, parties to a contract agree that an invoice falls due on the 30th day following its delivery and the supplier sends the invoice to the data box the invoice will be deemed to have been delivered on the date the recipient (the authorised person) logs into its data box, but no later than on the 10th day after the message was actually delivered to the data box. The invoice's due date will start running from the

day after and the customer will be in default if it does not pay the invoice within the 30-day time limit.

Parties who have a data box should log in regularly at least every 10 days.

In 2023, we will have another change to look forward to. A data box will be automatically established for natural persons who are not entrepreneurs if they log in to the National Identification and Authentication Point.

Cookie rules have changed as of 1 January 2022

As of 1 January 2022, the amendment to the Electronic Communications Act makes it possible to use cookies only on the basis of opt-in (active) consent.

So far, the only requirement was that users had the option to reject cookies (tools that store information on a user's computer while browsing a website). Now, instead of offering users an opt-out, users must grant prior demonstrable consent to the scope and purpose of the cookies (opt-in).

However, other similar tools such as tracking pixels (special code on a web page), web trackers (tools that track the user using software tools) and web beacons (graphical images placed on the web that also allow the user to be tracked) are also subject to said duty.

On the other hand, a legal exception still applies to technical/essential cookies, which allows their use even without the user's active consent (provided that they are actually necessary for operating the website). However, other cookies such as preference, marketing, statistical or analytical cookies will always require the user's opt-in consent.

It is therefore necessary to focus on cookie bars, to set their layers and revise the consents to match the new requirements. Unfair practices that force



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the user to give consent in any way (such as pre-ticked boxes, no opt-out button, misleading information, inability to close the bar without any response, etc.) or make it fundamentally more difficult for the user to use the website if they do not give consent (such as to spread a cookie bar across the entire webpage, pop-up bars constantly popping up even after the cookie bar is closed) must be rejected.

Unsolicited telemarketing gets restricted

As of 1 January 2022, the amendment to the Electronic Communications Act also restricts the possibility of unsolicited telemarketing.

Until recently, it was only prohibited to make telephone calls to offer, market or advertise products (or to make any other similar offers via telephone) to subscribers who registered in the public telephone directory that they did not wish to receive marketing calls. The principle is now reversed. Telemarketing is prohibited to persons unless they have indicated in the public directory that they wish to be contacted for marketing purposes (the so-called "opt-in principle"). This prohibition applies to both natural persons and legal entities.

It is therefore no longer necessary to object to being contacted by telephone for direct marketing purposes, as now any subscriber can only be contacted for the purpose of marketing advertising or other similar means of offering goods or services if they have agreed to it in advance.

It is always a good idea to consider thoroughly whether or not to give one's consent as it is automatically assumed that you do not agree to this form of approach.

Internet access services get transferrable

As of 1 January 2022, the amendment to the Electronic Communications Act makes it easier to change internet service providers. Every internet access service provider is required to ensure that

any subscriber who so requests can change internet access service providers in order to ensure continuity of the services provided, as far as technically possible.

Upon the subscriber's request, the new internet access service provider will arrange the change. Both the existing and the new internet access service provider are obliged to assist each other in arranging the change. The business that is responsible for operating the public communications network used by the business from or to which the internet access service is being transferred shall not impede the transfer process.

The interruption of internet access service during the transfer (change of the provider) must not exceed one business day. The subscriber has the right to receive one-off compensation if the transfer of services gets delayed. The same right shall apply to the porting of telephone numbers. The method of determining the amount of the one-off compensation and the method of publishing information on the right to the one-off compensation shall be laid down in implementing legislation, and the one-off compensation shall not be less than CZK 100 per day and not more than CZK 1,000 per day. The foregoing is without prejudice to the right to compensation for damages under the Civil Code to the extent exceeding the one-off compensation.

New contractual requirements and reporting obligations

Od 1. 1. 2022 dále dochází k novému vymezení. As of 1 January 2022, there will be a new definition of what particulars contracts for publicly available electronic communications services are required to have, and a new definition of the reporting obligation. The reporting obligation has been completely redefined in Annex 1 to the Electronic Communications Act and, although it largely corresponds to the previous requirements for the contents of the contracts, new obligations have



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been imposed on providers, such as the aforementioned obligation to pay one-off compensation for delays in the portability of services.

Another new feature is a substantial increase in transparency, as some electronic communications service providers (such as internet providers) are now required to disclose (in a clear, comprehensive and machine-readable manner) the conditions under which they provide their services. In addition, such information must be published in an easily accessible form that allows comparing the prices of different service providers. The Czech Telecommunications Authority is entitled to prescribe such a form. The aim here is again to strengthen the rights of consumers and help them when choosing between the services of different providers.

In addition to the change in the concept of the reporting obligation itself and the strengthening of transparency, it is also essential that there is full harmonisation in this area in all EU Member States (unification of the rules for the whole EU), which should make it easier for service subscribers to understand the service terms conditions in different countries and, at the same time, partly facilitate the cross-border provision of services to providers who will find it easier to comply with the national requirements of individual EU Member States

Changes in the term of electronic communications service contracts

What is equally interesting is the restriction introduced by the amendment to the Electronic Communications Act as of 1 January 2022, whereunder a contract for particular electronic communications services entered into with a consumer for a fixed term may not exceed 24 months; otherwise, it is deemed to be a perpetual contract (such restriction would not apply only if a longer instalment payment is agreed in connection with a contract for the introduction of a physical

connection). The aim is therefore to protect consumers by regulating the maximum term of their contractual obligation or subjecting their contract to the general possibility of termination on the basis of (the fiction of) a perpetual term.

However, the new legislation goes even further with the protection. On one hand, it does not exclude the possibility of automatic renewal of the contract after it expires under the same conditions and for the same term, but if it does so, the subscriber must have the right to terminate the contract with the maximum of one month's notice. In addition, the provider is required to clearly inform the subscriber at least one month in advance of his/her right to terminate the contract.

Bundle regulation

As of 1 January 2022, the amendment to the Electronic Communications Act further introduces the regulation of so-called "service bundles" or "packages". The aim of the legislation is to punish unfair practices where, due to one contractual obligation, the subscriber was usually not allowed to terminate his/her contract with the provider due to the duration of another contractual obligation, i.e. another part of the contract or another bundle. However, it is now provided that if the subscriber has the right to terminate the contract for any component of the package before the end of the agreed period on the grounds of defective performance or other breach of contract, he/she has the right to terminate the contract for all components of the bundle.

In addition, the conclusion of contracts for additional/supplementary services with the same service provider may not extend the term of the original commitment, unless the subscriber explicitly agrees.

The legal protection outlined above regarding the regulation of service bundles and limitations on the contract term will apply not only to subscribers but also to micro, small and non-profit



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organisations. Importantly, there has also been full harmonisation in all EU Member States in this area (EU-wide harmonisation of rules) and, therefore, subscribers can also rely on these rights in other EU Member States.

Do you have questions or need legal advice? Do not hesitate to contact us.

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