

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Monetise Media Limited

Of: Unit J Williams Yard
Derby Road
Melbourne
Derby
DE73 8JR

1. The Information Commissioner ("the Commissioner") has decided to issue Monetise Media Limited ("MML") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of regulation 22 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. MML, whose registered office address is given above (Companies House Registration Number: 07875484) is the organisation stated in this notice to have instigated the transmission of unsolicited communications by means of electronic mail to individual subscribers for the purposes of direct marketing contrary to regulation 22 of PECR.
4. Regulation 22 of PECR states:

- "(1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.*
- (2) Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.*
- (3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where—*
- (a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;*
 - (b) the direct marketing is in respect of that person's similar products and services only; and*
 - (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.*
- (4) A subscriber shall not permit his line to be used in contravention of paragraph (2)."*

5. Section 122(5) of the Data Protection Act 2018 "DPA18" defines direct marketing as "*the communication (by whatever means) of advertising or marketing material which is directed to particular individuals*". This definition also applies for the purposes of PECR (see regulation 2(2) PECR and paragraphs 430 & 432(6) to Schedule 19 of the DPA18).
6. Consent in PECR, between 29 March 2019 and 31 December 2020, was defined by reference to the concept of consent in Regulation 2016/679 ("the GDPR"): regulation 8(2) of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019. Article 4(11) of the GDPR sets out the following definition: "*consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her*".
7. From 1 January 2021, consent in PECR has been defined by reference to the concept of consent in the UK GDPR as defined in section 3(10) of the DPA 2018^[1]: see regulation 2(1) of PECR, as amended by Part 3 of Schedule 3, paragraph 44 of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419. Article 4(11) of the UK GDPR sets out the following definition: "*consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her*".

^[1] The UK GDPR is therein defined as Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

8. Recital 32 of the UK GDPR materially states that *"When the processing has multiple purposes, consent should be given for all of them"*. Recital 42 materially provides that *"For consent to be informed, the data subject should be aware at least of the identity of the controller"*. Recital 43 materially states that *"Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case"*.
9. "Individual" is defined in regulation 2(1) of PECR as *"a living individual and includes an unincorporated body of such individuals"*.
10. A "subscriber" is defined in regulation 2(1) of PECR as *"a person who is a party to a contract with a provider of public electronic communications services for the supply of such services"*.
11. "Electronic mail" is defined in regulation 2(1) of PECR as *"any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service"*.
12. Section 55A of the DPA (as applied to PECR cases by Schedule 1 to PECR, as variously amended) states:

"(1) The Commissioner may serve a person with a monetary penalty if the Commissioner is satisfied that –

 - (a) there has been a serious contravention of the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 by the person,*
 - (b) subsection (2) or (3) applies.*

(2) This subsection applies if the contravention was deliberate.

(3) *This subsection applies if the person –*

(a) knew or ought to have known that there was a risk that the contravention would occur, but

(b) failed to take reasonable steps to prevent the contravention.”

13. The Commissioner has issued statutory guidance under section 55C(1) of the DPA about the issuing of monetary penalties that has been published on the ICO's website. The Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribe that the amount of any penalty determined by the Commissioner must not exceed £500,000.
14. PECR were enacted to protect the individual's fundamental right to privacy in the electronic communications sector. The Commissioner will interpret PECR in a way which is consistent with the Regulations' overall aim of ensuring high levels of protection for individuals' privacy rights.
15. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the DPA18: see paragraph 58(1) of Schedule 20 to the DPA18.

Background to the case

The initial investigation into MML

16. Mobile phone users can report the receipt of unsolicited marketing text messages to the Mobile UK's Spam Reporting Service by forwarding the message to 7726 (spelling out "SPAM"). Mobile UK is an organisation

that represents the interests of mobile operators in the UK. The Commissioner is provided with access to the data on complaints made to the 7726 service and this data is incorporated into a Monthly Threat Assessment (MTA) used to ascertain organisations in breach of PECR.

17. In July 2021, the Commissioner carried out a review of 7726 complaints data. This involved searching the body of text messages which were the subject of 7726 complaints for the phrase 'struggling with debt'. The review identified 726 complaints that included this phrase during the period 04 January 2021 to 27 July 2021.
18. Further analysis of the text messages identified five web addresses ("URLs"), mentioned in the messages, that had generated 10 or more complaints. One of these URLs was 'debtkickout.co.uk', which redirected to a website called 'Clear My Debt'. A further search for this URL was carried out on the 7726 complaints data, which identified another 57 complaints for the period from 15 June 2021 to 19 July 2021.
19. MML owns the 'Clear My Debt' website. MML was incorporated on 8 December 2011 and is a marketing and technology company that works with a range of third-party data controllers who generate leads for their advertising partners.
20. On 28 July 2021, an investigation letter was sent to MML. The letter asked MML to provide details of calling line identifiers ("CLIs") used to send marketing text messages, volumes of marketing text messages sent and received, and evidence of individuals consenting to receiving such text messages.
21. MML responded on 6 August 2021. It explained that it did not send marketing text messages itself but relied on an affiliate, [REDACTED]

██████████ ("██████"), to send marketing text messages to their own data set promoting MML's Clear My Debt product.

22. ██████ also provided a response to the Commissioner's investigation letter. It explained that it used a website called '██████████' to collect personal information from individuals. This website suggests that individuals with a poor credit rating would be able to obtain a mobile phone telephone contract.
23. ██████ supplied an example of a customer journey through their website which ended with the submission of personal information. There is no indication during this journey that a customer's personal information will be passed to other third parties for other purposes. ██████ privacy policy states that information collected by ██████ will be passed to organisations which include Clear My Debt, Lemon Loans (which operates the website '*lemonloans.co.uk*'), and others. By accepting the terms and conditions of ██████████, individuals are automatically opted in to receiving marketing contacts from these other organisations.
24. On 20 August 2021, the Commissioner asked ██████ if it carried out any other campaigns for MML. ██████ responded on 23 August, confirming that it carried out a campaign for MML promoting Lemon Loans. On 24 August 2021, the Commissioner asked MML if they used any other affiliates to send marketing messages on their behalf. MML responded the same day to state that no other affiliates had been used. An end of investigation letter was therefore sent on 26 August.

The further investigation into MML's other affiliates

25. However, the Commissioner then carried out a further review of complaints made by members of the public, which identified 5 additional complaints in which it appeared that further affiliates had

been used by MML. He informed MML of this finding on 27 August 2021.

26. MML responded on 3 September 2021, confirming that it had used other affiliates to send marketing messages, including [REDACTED].
27. [REDACTED] operates the website '[REDACTED]'. This allows individuals to opt in to receiving marketing messages from certain organisations and by specified means, or relating to particular sectors. One of the industry sectors specified is 'financial services'. MML and trading names or products used by MML are not listed in the privacy policy.
28. Further enquiries were made of MML, including two telephone conferences on 24 September 2021 and 27 September 2021, seeking clarification of the process by which individuals visiting the websites of its affiliates' consented to receiving direct marketing messages.
29. The Commissioner requested MML to provide further information about the affiliates it used, as this had not initially been provided in response to the earlier investigation letter, and also advised MML that it was not named in the privacy policies used by its affiliates.
30. MML was of the view that while it was not named, it was covered by the references in these policies to certain industry sectors or services (such as 'short term loans' or 'financial services'). MML later provided evidence including screen shots of the affiliates' websites.
31. The Commissioner requested further information from MML on 4 and 19 November 2021, including a full list of other affiliate or sub-affiliate websites used to collect personal data which was used to promote MML

products. MML said it was unable to provide a full list, advising that, due to commercial sensitivity, it had not been able to acquire all the information requested.

The Notice of Intent and the Preliminary Enforcement Notice

32. The Commissioner issued a Notice of Intent and Preliminary Enforcement Notice to MML, both dated 22nd July 2022.
33. These outlined the Commissioner's preliminary conclusions that, in total, 3,912,751 marketing emails and text messages were received by individuals from three MML affiliates of which the Commissioner was aware; that MML instigated the transmission of those direct marketing messages; that this constituted a contravention of regulation 22 of PECR; and that the conditions under section 55A DPA were met.
34. The Commissioner decided that a penalty in the sum of £130,000 was appropriate.
35. MML made representations in response to the Notice of Intent and the Preliminary Enforcement Notice on 2 August 2022 and 26 August 2022. MML said that it operated simply as a 'middle-man' which connected its affiliates with debt management companies, and that it did not instigate the sending of any marketing messages.
36. The Commissioner has considered these representations carefully. It finds that this explanation of MML's business model is incorrect in respect of Lemon Loans. The Privacy Notice for lemonloans.co.uk dated 4 September 2018 states that

"lemonloans.co.uk is a website owned and operated by Monetise Media Ltd, a company organised under the laws of England and Wales with a

Company Number 07875484 and registered with the Information Commissioner's Office under Registration Number ZA036277."

37. The Commissioner therefore finds that MML did instigate the transmission of direct marketing messages in respect of Lemon Loans by its affiliate, [REDACTED].

The marketing messages sent and received

38. The number of marketing emails sent by [REDACTED] of which the Commissioner is aware and received by members of the public, promoting the Lemon Loans brand, during the period 28 July 2020 to 28 July 2021 ("the contravention period"), was as follows:

Affiliate	Marketing emails sent	Marketing emails received	MML Brand Promoted
[REDACTED]	3,974,236	3,457,586	Lemon Loans

39. [REDACTED] sent 55,167 marketing text messages on behalf of MML, of which 48,571 had been received by individuals. [REDACTED] informed the Commissioner that it only promoted Lemon Loans, and that it did so via marketing text messages, not emails.
40. The Commissioner has made the above findings of fact on the balance of probabilities.
41. The Commissioner has considered whether those facts constitute a contravention of regulations 22 of PECR by MML and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

42. The Commissioner finds that MML contravened regulation 22 of PECR. The contravention was as follows:
43. The Commissioner finds that between 28 July 2020 and 28 July 2021 a total of 3,506,157 direct marketing emails and text messages were received by subscribers. The Commissioner finds that MML instigated the transmission of those direct marketing messages, contrary to regulation 22 of PECR.
44. MML, as the instigator of the direct marketing, is required to ensure that it is acting in compliance with the requirements of regulation 22 of PECR, and to ensure that valid consent to send those messages had been acquired.
45. For consent to be valid it is required to be “freely given”, by which it follows that if consent to marketing is a condition of subscribing to a service, the organisation will have to demonstrate how the consent can be said to have been given freely.
46. In this instance, consent to receiving marketing text messages by [REDACTED], on behalf of MML, was not freely given. Individuals are automatically opted in to receiving marketing messages from [REDACTED] when they accept the terms and conditions of [REDACTED]. This does not constitute freely given and valid consent.
47. As for the consents obtained by [REDACTED], the Commissioner’s direct marketing guidance says “*organisations need to be aware that indirect consent will not be enough for texts, emails or*

automated calls. This is because the rules on electronic marketing are stricter, to reflect the more intrusive nature of electronic messages."

48. However, it does go on to say that indirect consent may be valid, but only if it is clear and specific enough. If categories of organisations are referred to then those categories must be tightly defined and the organisation wanting to use the consent must clearly fall within the description. Consent is not likely to be valid where an individual is presented with a long, seemingly exhaustive list of categories of organisations.
49. Consent is also required to be "specific" as to the type of marketing communication to be received, and the organisation, or specific type of organisation, that will be sending it.
50. Consent will not be "informed" if individuals do not understand what they are consenting to. Organisations should therefore always ensure that the language used is clear, easy to understand, and not hidden away in a privacy policy or small print. Consent will not be valid if individuals are asked to agree to receive marketing from "similar organisations", "partners", "selected third parties" or other similar generic description.
51. In this case, an individual visiting the '[REDACTED]' website of [REDACTED] was able to opt in to marketing messages relating to the 'financial products' industry sector. This term is too broad to count as specific and informed consent to receive marketing messages from [REDACTED] promoting Lemon Loans. MML was not listed on the '[REDACTED]' website.
52. In sum, the Commissioner has considered the 'consents' obtained by MML's affiliates on behalf of MML and is concerned that there are issues

regarding whether the consent and be said to be freely given, specific and informed.

53. The Commissioner is therefore satisfied from the evidence he has seen that MML did not have the necessary valid consent for the 3,506,157 direct marketing messages received by subscribers.
54. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

55. The Commissioner is satisfied that the contravention identified above was serious. This is because between 28 July 2020 and 28 July 2021, a confirmed total of 3,506,157 direct marketing messages were sent at the instigation of MML. These messages contained direct marketing material for which subscribers had not provided valid consent.
56. MML used a combination of affiliates to obtain personal data for marketing. MML and [REDACTED] have admitted that they do not carry out due diligence on all affiliate websites used. MML is not fully aware of how personal data is collected and has only reviewed a small number of websites used by affiliates.
57. The campaigns instigated by MML generated 236 complains submitted to Mobile UK's Spam Reporting Service and 5 email complaints submitted to the Commissioner.

58. The Commissioner is therefore satisfied that condition (a) from section 55A(1) DPA is met.

Deliberate or negligent contraventions

59. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, a contravention is deliberate where MML's actions which constituted that contravention were deliberate actions (even if MML did not actually intend thereby to contravene PECR).
60. The Commissioner considers that in this case MML did deliberately contravene regulation 22 of PECR. During the contravention period, MML was the instigator of 3,506,157 marketing text messages and emails, which were sent by several affiliates in order to steer individuals to MML's websites and products. Further, MML's marketing model is convoluted for individuals in receipt of those messages.
61. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
62. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
63. Firstly, he has considered whether MML knew or ought reasonably to have known that there was a risk that these contraventions would occur. He is satisfied that this condition is met. Given that MML relied substantially on direct marketing due to the nature of its business, it should reasonably have sought to familiarise itself with the relevant legislation.

64. Further, MML appears to be aware of the requirements under the PECR. It referred to the appropriate legislation in its responses and did attempt to carry out some due diligence on affiliates. However, it did not review all websites used, and has instead relied on assurances that the affiliates have obtained that the data is fit for purpose.
65. The Commissioner has published detailed guidance for those carrying out direct marketing explaining their legal obligations under PECR. This guidance gives clear advice regarding the requirements of consent for direct marketing and explains the circumstances under which organisations are able to carry out marketing over the phone, by text, by email, by post, or by fax. In particular it states that organisations can generally only send, or instigate, marketing messages to individuals if that person has specifically consented to receiving them.
66. The Commissioner has also published detailed guidance on consent under the GDPR. In case organisations remain unclear on their obligations, the ICO operates a telephone helpline. ICO communications about previous enforcement action where businesses have not complied with PECR are also readily available.
67. It is therefore reasonable to suppose that MML should have been aware of its responsibilities in this area.
68. Secondly, the Commissioner has gone on to consider whether MML failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met.
69. The Commissioner's direct marketing guidance makes clear that organisations utilising marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data

was obtained fairly and lawfully, and that they have the necessary consent.

70. It is not acceptable to rely on assurances given by third party suppliers, as MML did in this case, without undertaking proper due diligence. MML and [REDACTED] admit that they had not reviewed all the website used by affiliates to collect personal information.
71. MML is of the view that some of the websites used to collect information did so in compliance with the PECR as they provided to individuals the industry sectors and products about which they may be contacted. However, as explained above, the Commissioner considers that this is insufficient to count as valid consent and that individuals would not be fully aware that they would receive contact from [REDACTED] [REDACTED] regarding MML's products.
72. The Commissioner would have expected MML to conduct proportionate due diligence of the websites that collected data that it used to contact individuals, in order to confirm that it had obtained adequate consent. MML could have achieved this by following customer journeys rather than relying on assurances from third parties.
73. In the circumstances, the Commissioner is satisfied that MML failed to take reasonable steps to prevent the contraventions.
74. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

75. The Commissioner has taken into account the following aggravating features of this case:

- The investigation by the ICO should have alerted MML that its business model was not compliant with the PECR. There is no evidence to indicate that MML have subsequently reviewed its business model or processes to ensure compliance. Since this investigation commenced complaints about marketing of MML's products have continued to be received via the 7726 reporting service.
 - MML engaged with the Commissioner's investigation in only a limited fashion. It informed the Commissioner that it used no affiliates other than █████ when this was incorrect. It also subsequently failed to prove full information when requested by the ICO investigating Officer.
76. The Commissioner does not consider that there are any mitigating factors in this case.
77. For the reasons explained above, the Commissioner is satisfied that the conditions from section 55A (1) DPA have been met in this case. She He is also satisfied that the procedural rights under section 55B have been complied with.
78. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. In reaching his final view, the Commissioner has taken into account the representations made by MML on this matter.
79. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
80. The Commissioner has considered the likely impact of a monetary penalty on MML. He has decided on the information that is available to

him, that a penalty remains the appropriate course of action in the circumstances of this case.

81. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The sending of unsolicited direct marketing messages is a matter of significant public concern. A monetary penalty in this case should act as a general encouragement towards compliance with the law, or at least as a deterrent against non-compliance, on the part of all persons running businesses currently engaging in these practices. The issuing of a monetary penalty will reinforce the need for businesses to ensure that they are only messaging those who specifically consent to receive direct marketing.
82. In making his decision, the Commissioner has also had regard to the factors set out in s108(2)(b) of the Deregulation Act 2015; including: the nature and level of risks associated with non-compliance, including the risks to economic growth; the steps taken by the business to achieve compliance and reasons for its failure; the willingness and ability of the business to address non-compliance; the likely impact of the proposed intervention on the business, and the likely impact of the proposed intervention on the wider business community, both in terms of deterring non-compliance and economic benefits to legitimate businesses.

The amount of the penalty

83. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of £125,000 is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

84. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **13 January 2023** at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.
85. If the Commissioner receives full payment of the monetary penalty by **12 January 2023** the Commissioner will reduce the monetary penalty by 20% to £100,000. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
86. There is a right of appeal to the First-tier Tribunal (Information Rights) against:
- (a) the imposition of the monetary penalty
and/or;
 - (b) the amount of the penalty specified in the monetary penalty notice.
87. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
88. Information about appeals is set out in Annex 1.
89. The Commissioner will not take action to enforce a monetary penalty unless:

- the period specified within the notice within which a monetary penalty must be paid has expired and all or any of the monetary penalty has not been paid;
- all relevant appeals against the monetary penalty notice and any variation of it have either been decided or withdrawn; and
- the period for appealing against the monetary penalty and any variation of it has expired.

90. In England, Wales and Northern Ireland, the monetary penalty is recoverable by Order of the County Court or the High Court. In Scotland, the monetary penalty can be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

Dated 12th December 2022

Andy Curry
Head of Investigations
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

SECTION 55 A-E OF THE DATA PROTECTION ACT 1998

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 55B(5) of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the 'Tribunal') against the notice.

2. If you decide to appeal and if the Tribunal considers:-

a) that the notice against which the appeal is brought is not in accordance with the law; or

b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

General Regulatory Chamber
HM Courts & Tribunals Service
PO Box 9300
Leicester
LE1 8DJ

Telephone: 0203 936 8963
Email: grc@justice.gov.uk

- a) The notice of appeal should be sent so it is received by the Tribunal within 28 days of the date of the notice.
 - b) If your notice of appeal is late the Tribunal will not admit it unless the Tribunal has extended the time for complying with this rule.
4. The notice of appeal should state:-
- a) your name and address/name and address of your representative (if any);
 - b) an address where documents may be sent or delivered to you;
 - c) the name and address of the Information Commissioner;
 - d) details of the decision to which the proceedings relate;
 - e) the result that you are seeking;
 - f) the grounds on which you rely;
 - g) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;
 - h) if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time

and the reason why the notice of appeal was not provided in time.

5. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

6. The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are contained in section 55B(5) of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).