

FEDMA input on Unsolicited communications and their effective industry best-practices

Within the context of the review of the ePrivacy Directive, FEDMA would like to provide a state of play of the legal landscape that covers telemarketing activities in the European Union. We would particularly like to highlight the fact that telemarketing activities are governed by the ePrivacy Directive (EPD), the Consumer Rights Directive (CRD) and the Unfair Commercial Practices Directive (UCPD). Both the EPD and the CRD currently leave Member States with the possibility to choose between opt-in or opt-out from telemarketing (art. 13 of the EPD) and whether contract concluded over the phone should be confirmed with a written consent (art. 8.6 of the CRD).

FEDMA believes that Member States should continue to decide on the adequate protection for individuals and the possibility to require written confirmation for contracts concluded by telephone. Indeed, telemarketing is a very cultural activity with different perceptions and practices across countries. Furthermore, telemarketing is a very local industry for two reasons: (i) the prominent use of the language, (with a few exceptions, where countries share a common language) and (ii) the importance of the economic profile of the area (remoteness or in area's with a lot of SME's such as catering, local groceries that deliver).

Furthermore, the current variety of legal regimes and the ability for Member States to decide on the rules for telemarketing does not hinge upon the Single Market's potential, nor does it impact trader's competitiveness, due to the mainly local nature of telemarketing. In FEDMA's views, the flexibility given by the E-Privacy and Consumer Right's Directive to Member States for telemarketing has led to a regime that both the industry and users have become familiar with. Moreover, the CRD includes a "cooling off" period, which ensures that consumers can purchase goods with confidence over the telephone, internet and through mail-order.

Harmonisation of telemarketing can be found through self-regulation which has been developed over the past years to provide users with tools to express their preferences regarding receiving marketing communication that can be stored in the telecom network or terminal equipment. 16 Robinson lists dealing with B2C telemarketing have been developed in Europe, mostly in countries which enable telemarketing on an opt-out basis. Some are even set-up by governments. Broad changes to these opt-out or national based systems would destroy prior financial investments in the systems.

Self-regulation would be a positive way to develop greater harmonisation while avoiding prohibition of any commonly accepted marketing practice, notably opt-out for telemarketing which is used in over half of the EU.

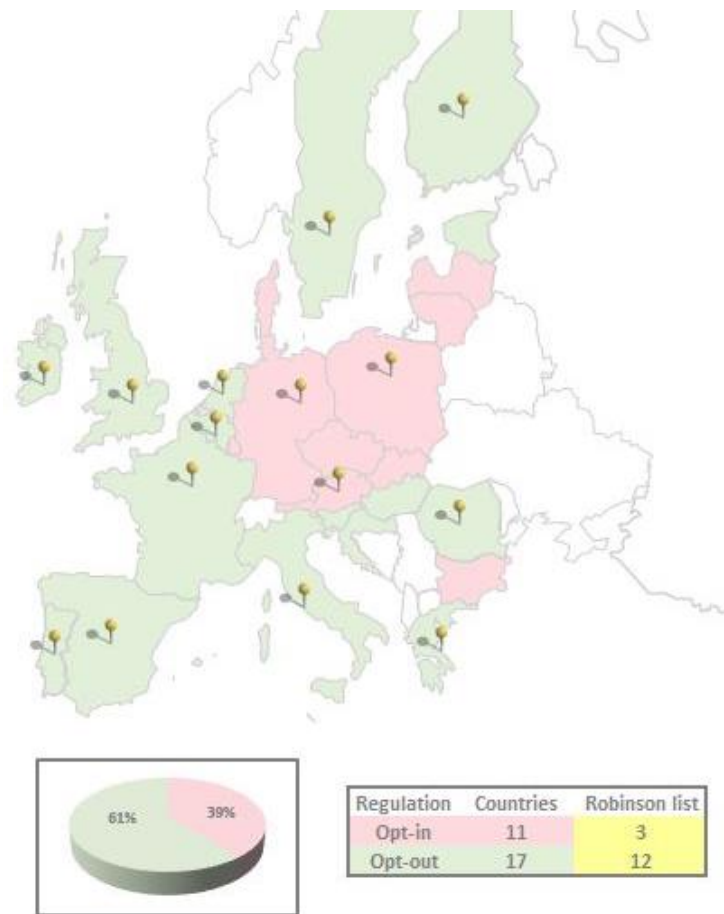
When used correctly, telemarketing has advantages for both sides

*In a panel survey representative of the population with about 1,000 interviewees, the German DMA (DDV e.V.) collected the opinions of German citizens on telephone contacts. A key result of this survey, which was carried out by the forsa Institute, was that **almost all consumers (97%) expect***



to be able to contact a company by phone. Moreover, consumers were also asked their opinion on contact times, frequency of calls and ringing time (i.e. how long the phone rings) when contact is made by the company, the consumers' awareness of the development of the number of calls in general as well as nuisance calls, in particular. DDV views the results positively: The telephone is for companies and consumers alike an effective channel of communication which, when used correctly, has advantages for both sides. The study confirms the key targets of the industry's code – with this we are obviously meeting the needs and expectations of the majority of the consumers.

Consent requirement (ePrivacy) in Europe - Map of the BtoC legislation



*Cyprus and Malta are not present in the maps, but counted in the graphics

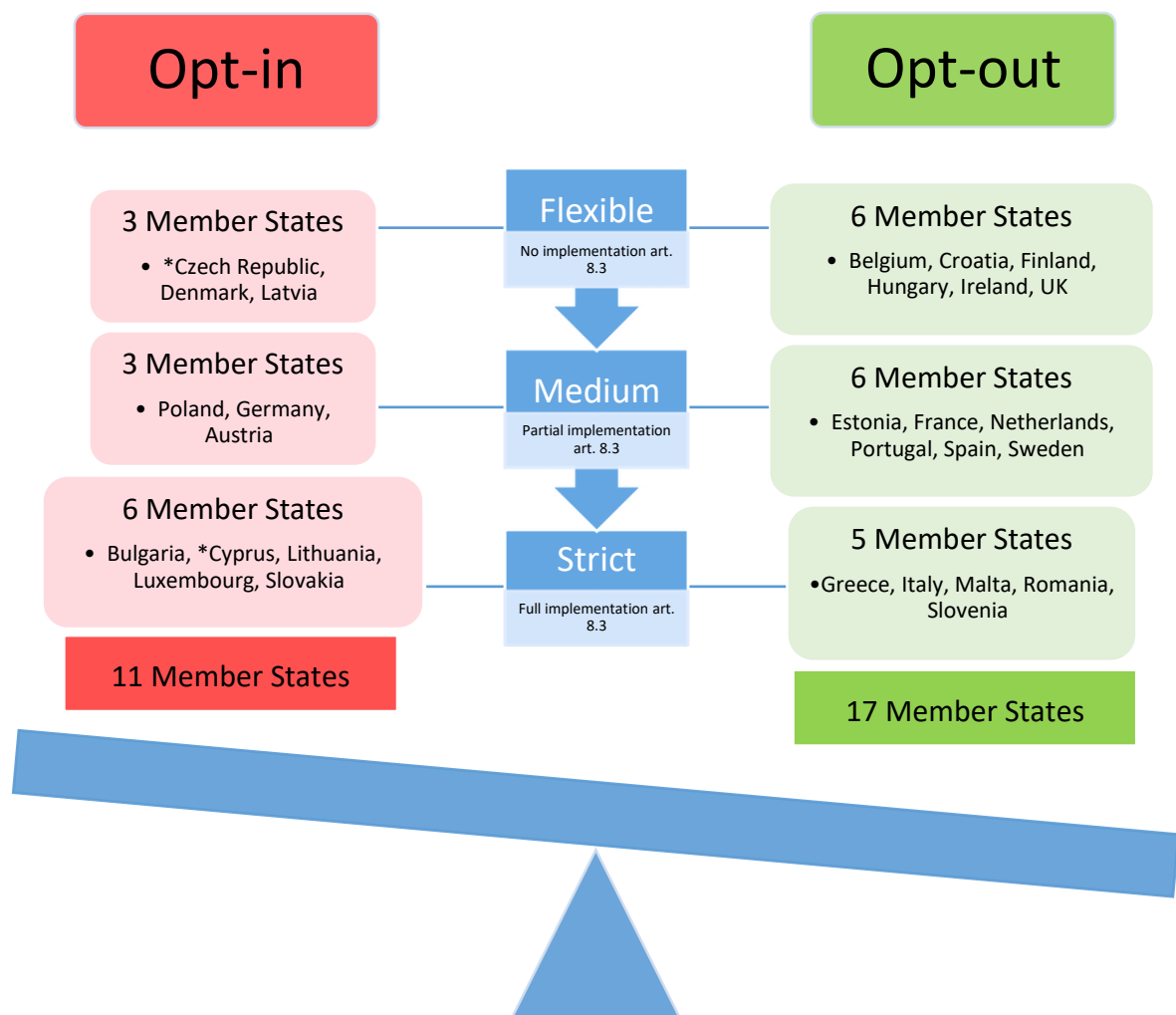
61% of Member States enables BtoC telemarketing calls on an opt-out basis. At least, **15 Robinson lists** or Preference lists dealing with B2C telemarketing have been developed in Europe, mostly in countries which enable telemarketing on an opt-out basis. In some member States, Robinson lists are either set up by Governments or officially recognised by them (i.e. Italy, France...). Broad changes to these opt-out mechanisms would destroy prior financial investments in the existing system.

[English Information Commissioner's Office](#), reports on a monthly basis nuisance calls. The reports provide information on complaints received, fines given and companies improving according to

ICO. ICO recommends consumers to check privacy statements when they provide their phone number or to opt-out using the TPS.

In the [official report of the investigation](#) on the protection of telemarketing in Sweden, it is stated that NIX-Telefon works well, most people know it exists, the companies respect it. There needs strengthening of the rules concerning when a company can use consent in order to call someone that is registered.

BtoC consent requirement combined with pre-contractual rules (CRD)



*Cyprus is a Opt-in, unless the telephone number is available in a public source

*Czech Republic is a Opt-in, unless the telephone number is available in a public source

17 Member States are still in opt-out regime, including 5 who apply neither opt-in and nor contractual requirements.

Less than 1/4 of the Member States have adopted the strictest approach for telemarketing, combining opt-in and contractual requirements.

Within the context of the review of the ePrivacy Directive, FEDMA would like to remind the Institutions of other industry best-practices for email and Online Behavioural Advertising.

FEDMA has developed an **on-line annex to its code of practice for the use of personal data in direct marketing, dedicated to electronic communication**. The Annex has been approved by the Article 29 Working Party in 2010, and includes clear guidance, as well as concrete examples on how consent can be collected for email marketing.

The **Pan European Self-regulatory programme on OBA** developed by the industry provides an alternative mechanism to provide information and control to the user about online behavioural advertising. Using an icon on which the individuals can click for more information and access the control tool, this programme contributes to individual's awareness about OBA. Furthermore, this programme enables individuals to send complaints. The complaint handling mechanism is supported by the European Advertising Standards Alliance (EASA), which has developed a Best Practice Recommendation on OBA (adopted by the industry in 2011). Self-Regulatory Organisations (SROs) are independent bodies set up by the ad industry to apply advertising codes of practice. In the case of OBA, the EASA Best Practice Recommendation on OBA details how SROs are responsible for consumer complaint handling on OBA. The EASA Best Practice Recommendation on OBA has allowed to extend remits of self-regulatory organizations (SRO) national codes and hence, give them the ability to handle complaints about OBA, if transparency and choice principles were not respected. The sanction may consist in the publication of a jury's decision ("Name and shame" principle). Each SRO reports periodically the effectiveness of the complaint process on OBA to the EASA (number of complaints, type of complaints, decisions rendered...).

According to the [European Advertising Consumer research report 2015](#), between 20% and 56% of the respondents, depending on the country, said that having the option to manage their preferences through this programme increased their levels of trust in the brand being advertised. Furthermore, between 26% and 59% of respondents are more favourable to the concept of OBA through the European Self-Regulatory programme. These results demonstrate that a well-informed opt-out mechanism can reach the objective of increasing trust online.

Annex: Detailed Table of Legislations for Telemarketing in EU

3 legislations cover telemarketing	Consent requirements (ePrivacy)		Contract requirements (CRD)	Fairness (UCPD)
	B2B	B2C	B2C	B2C
Austria	Opt-in	Opt-in	Limited application of article 8.6	<p>Telemarketers must not use unfair commercial practices.</p> <p>Unwanted and persistent solicitation is banned under Annex I point 26.</p> <p>This measure is of full harmonisation.</p> <p>However, sector specific measures prevail over the UCPD, meaning that such solicitations do not have to be persistent in cases where prior consent is required.</p> <p>Member States must penalise solicitations from the first call or email.</p>
Belgium	Opt-out	Opt-out	No application of article 8.6. Potential limited use of Article 8.6	
Bulgaria	Opt-in	Opt-in	Application of article 8.6	
Croatia	Opt-out	Opt-out	No application of article 8.6	
Cyprus	Opt-out	Opt-in, consent needed but public data can be used to collect consent	Application of article 8.6	
Czech Republic	Opt-in	Opt-in, unless the telephone number is available in a public source	No application of article 8.6	
Denmark	Opt-out	Opt-in, Opt out for telemarketing calls related to books, magazine, insurance and assistance services	No application of article 8.6	
Estonia	Opt-out	Opt-out	Article 8.6 applies only if the professional calls.	
Finland	Opt-out	Opt-out	No application of article 8.6	
France	Opt-out	Opt-out, but Call not allowed to individuals who are ex-directory	Article 8.6 applies only if the professional calls.	
Germany	Opt-in	Opt-in	Prior legislative requirements for certain sectors	
Greece	Opt-in	Opt-out	Application of article 8.6	
Hungary	Opt-out	Opt-out, opt-in for telemarketing calls offering telco services	No application of article 8.6	



FEDMA input

3 legislations cover telemarketing	Consent requirements (ePrivacy)		Contract requirements (CRD)	Fairness (UCPD)
	B2B	B2C	B2C	B2C
Ireland	Opt-out	Opt-out, for land lines. Opt-in for mobile phone number	No application of article 8.6	
Italy	Opt-out	Opt-out, for marketers which have register with the "Registro delle Opposizioni"	Application of article 8.6	
Latvia	Opt-out	Opt-in	No application of article 8.6	
Lithuania	Opt-out	Opt-in	Application of article 8.6	
Luxembourg	Opt-out	Opt-in	Application of article 8.6	
The Netherlands	Opt-out	Opt-out, different regime for commercial, non-commercial and charitable purposes	Limited application of article 8.6	
Malta	Opt-out	Opt-out	Application of article 8.6	
Poland	Opt-in	Opt-in	Article 8.6 applies only if the professional calls.	
Portugal	Opt-out	Opt-out	Article 8.6 applies only if the professional calls.	
Romania	Opt-out	Opt-out, consent can be collected at the time of the call	Application of article 8.6	
Slovakia	Opt-in	Opt-in	Application of article 8.6	
Slovenia	Opt-out	Opt-out, if the telephone number is available in a public source	Application of article 8.6	
Spain	Opt-out	Opt-out	Article 8.6 applies only if the professional calls.	
Sweden	Opt-out	Opt-out	Prior legislative requirements for certain sectors	
United Kingdom	Opt-out	Opt-out	No application of article 8.6	

