

NEWS MEDIA EUROPE

Brussels, 23 September 2021

Dear Member of the Telecommunication Working Party,

Ahead of the trilogue meeting on 29 September, the undersigned associations representing companies from European news media, press and direct marketing would like to raise serious concerns about one of the conclusions of the 4th technical trilogue on the e-Privacy Regulation.

We are greatly concerned about proposals to delete Article 16(4). While article 16 establishes the need to obtain user consent for direct marketing communication, Article 16(4) provides Member States with flexibility to decide the rules applicable to telephone marketing in their respective territories.

The deletion of article 16(4) is not supported by the European Parliament nor Council negotiating mandates. The Commission's original proposal, while strengthening the rules on direct marketing, also consciously maintained this flexibility¹. This approach strikes a good balance that reconciles the need to conduct legitimate marketing activities with the protection of privacy in electronic communications. Such an unexpected deletion would impose a one-size-fits-all opt-in regime at EU level for telephone marketing, thus negatively impacting all markets currently using an opt-out system and where telephone marketing represents an efficient and competitive activity for press publishers, non-profit organisations, and marketers.

- An opt-in system imposed across the EU would be detrimental for newspapers and magazines which depend on telephone marketing for subscriptions. Estimates have provided that subscriptions are one of the main revenue sources for press publishers and across the EU subscription circulation depends up to 40% on telephone marketing, with peaks of 70% for specific editorial offerings in certain Member States. If adopted, the new rules would have **negative consequences on public access to professional journalistic and editorial content and threaten the sustainability and pluralism of the press through the closure of press titles.**
- Telephone marketing remains one of the most effective means of communications to engage with donors and subscribers. The practice enables a dialogue which can lay the foundation for consistent support as well as member- and readership. The deletion of Article 16(4) would therefore **jeopardize the fundraising activities and financing operations of press publishers, non-profit and political organisations with an adverse impact on their missions and democratic diversity, respectively.**
- Telephone marketing is a very country-specific activity, linked to different culture and practices across countries which makes it difficult to find a one-size-fits-all solution. This is due to the local nature of this industry, especially (i) the prominent use of the language, and (ii) the importance of the economic and geographic profile of the area (remoteness, population density, presence of other economic activities).
- Direct marketing is crucial to develop commercial opportunities for European businesses. Without it, press publishers would lose valuable readership and the direct relationship with their audience. It would also deprive press publishers and many local companies from an efficient and safe channel of communication while **deepening the dependence of small businesses on online advertising, and specifically on targeted behavioural advertising, which might be restricted by future legislation or gatekeeper platforms.**

In addition, disabling opt-out regimes would **undermine prior public and private investments in the development of Robinson Lists/Do Not Call Me Registers, and other opt-out mechanism.** Fifteen Robinson Lists dealing with B2C telemarketing have been developed in Europe, enabling subscribers to express their

¹ Impact assessment [SWD \(2017\)3](#) could not find evidence of a relation between the problems of voice-to-voice marketing calls and opt-out models and said that a shift to mandatory opt-in could generate costs without guarantees of a benefit.

preferences. By ruling out direct marketing voice-to-voice calls to end-users who have not expressed an objection, current trilogue discussions will put to waste these efforts and investments which have proved to be effective in promoting consumer trust while promoting fair and contestable markets.

We therefore urge the EU institutions to preserve Article 16(4) in line with the original proposal and respective negotiating mandates to ensure a future-proof e-Privacy Regulation and protect press publishers, NGOs and local businesses in the absence of a sound evidence-based analysis and a specific impact assessment, and to clarify that **telephone marketing is included within the scope of article 16(2)** for contacting existing customers.

Furthermore, we wish to reiterate the importance of maintaining the option to choose between a prefix and a calling-line identification, as provided in Art. 16(3) of the Commission proposal and the Parliament mandate: otherwise, as proposed in the Council mandate's Art. 16(3a), articles 14 and 16 would result in a default blocking of all marketing calls, regardless of the opt-in or opt-out system in place.

We thank you for taking our comments into account and remain at your disposal for any further clarifications.

Yours sincerely,

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