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Federation of European Data and Marketing

Regulating Telemarketing in the EU: An Evidence-Based and Comparative Analysis with a Focus on Opt-In and Opt-Out Frameworks

About the report

This report has been prepared by the Federation of European Data and Marketing (FEDMA) with the aim of contributing to a more informed debate on the regulation of telemarketing within the EU/EEA and the UK. Its primary purpose is to improve understanding of the regulatory models currently governing business-to-consumer telemarketing. The report does not cover business-to-business telemarketing or telemarketing without human intervention.

The data underpinning the report has been drawn largely from open sources. In certain limited sections, the report relies on data compiled specifically for this purpose. Given the constraints on data availability, the material in these sections should be interpreted with caution. Where data from individual Member States is used, those countries and markets have been selected to provide a representative overview of the situation across the EU/EEA and the UK.

The report defines consumer protection as protecting the economic interests of the consumer, alongside other relevant framework objectives reflected in Article 169 of the Treaty on the Functioning of the European Union and European secondary legislation, such as the right to information.[1] In the context of telemarketing, this covers protection of the average consumer against unwanted contacts. In everyday life, effective consumer protection means that consumers:

- avoid unwanted contacts;
- can straightforwardly and effectively decline such contacts;
- seek effective redress;
- are robustly protected against misleading marketing practices;
- can make informed choices and act in their economic interests through access to relevant information about products and services.

The report does not purport to constitute research in its own right; rather, its aim is to broaden the perspective and identify areas where further research is warranted.

FEDMA represents members in most EU countries as well as countries outside of the EU, such as the UK, including both countries that apply opt-in models and those that apply opt-out models.

Brussels in June 2026

[1] See https://eur-lex.europa.eu/eli/dir/2005/29/oj/eng (recital 6 and Article 8). The Treaties set the objective of a high level of consumer protection but do not define it. EU secondary legislation regulates telemarketing while leaving Member States discretion to choose between different regulatory models, such as opt-in or opt-out regimes.

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Executive summary

EU law establishes rules for telemarketing through several legal acts. Among other things, Member States are given a choice between requiring prior consent (opt-in to receive telemarketing calls) or ensuring that consumers have a means of indicating whether they wish to object to receiving telemarketing calls (opt-out).[2] **Both approaches pursue the same objective: to give consumers control over whether or not they wish to be contacted by telephone for sales purposes in the light of the right to privacy. However, this report finds no robust evidence that opt-in, in itself, provides a higher level of consumer protection than opt-out.**

In addition to the choice between opt-in and opt-out, **some EU Member States have introduced telemarketing rules based on consumer-law considerations**, such as prohibitions on oral contracts (requirements for written contracts). Besides, **opt-in and opt-out are used with roughly equal frequency among EU Member States**, with a slight tendency towards a growing number of opt-in countries. Although telemarketing has been the subject of political debate in several Member States, there is virtually no academic research or other studies on the relative consumer-protection merits of one model (opt-in/opt-out) compared with the other.

Overall, the report finds no robust support for the assumption that opt-in per se would provide a higher level of consumer protection than opt-out, despite of the political debates on telemarketing in several Member States. The choice between opt-in and opt-out primarily determines the conditions under which traders may initiate contact with consumers. It does not, in itself, address the main consumer-protection concerns associated with telemarketing, such as misleading or aggressive sales practices, contractual lock-in, withdrawal rights or access to redress. These harms arise primarily from what happens during or after the call, rather than from the formal model governing whether the call may be made.

A recurring problem in the policy debate is that privacy protection and consumer protection are sometimes conflated. Opt-in and opt-out rules

[2] See https://eur-lex.europa.eu/eli/dir/2002/58/oj/eng (Article 13)

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primarily concern privacy: they regulate whether a trader may contact an individual by telephone in the first place. Consumer protection in the narrower sense concerns different issues, such as misleading or aggressive sales practices, contractual lock-in, withdrawal rights and access to redress. If an opt-in model does not in practice reduce unwanted or harmful calls, its consumer-protection benefits are uncertain. In the worst case, it may even weaken consumer protection if consumers assume that calls received under an opt-in regime are necessarily legitimate.

Consumer harms arising after contact has occurred are therefore more likely to require other tools, in particular active and continuous enforcement against non-compliant traders, and possibly targeted review of rules such as withdrawal rights for subscription-based contracts.

A general conclusion is that more research is desirable, particularly from a consumer-protection perspective. Research on how the models affect specific groups — such as older consumers and those with limited language proficiency — would also be valuable.

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1. Privacy protection or consumer protection: two distinct objectives and regulatory approaches

1.1. EU law regulates telemarketing in several stages

Telemarketing within the EU is not governed by a single coherent regulatory framework, but by several legal acts addressing separate elements (of a phone call). There are rules that govern whether a sales call may be made, rules that govern the conduct and content of such calls, and rules that govern how a contract may be concluded by telephone. Three legal acts with different functions are particularly important: the e-Privacy Directive, the Consumer Rights Directive and the Unfair Commercial Practices Directive.

The e-Privacy Directive[3] concerns privacy and electronic communications. For telemarketing, the central provision is Article 13 on unsolicited direct marketing. As regards live telemarketing, i.e. sales calls between individuals and to consumers, Member States are in practice required to choose between two different models: either a system requiring prior consent for a telemarketing phone call from the called party (so-called "opt-in") or a system under which persons who have objected to such calls are protected (so-called "opt-out"), normally through a do-not-call register. **The Directive therefore primarily regulates the permissibility of the contact itself and the protection of the individual's private life in the communications context.** The approach reflects the principle set out in the International Chamber of Commerce (ICC) Advertising and Marketing Communications Code[4]: that consumers themselves choose the channels through which they wish to be contacted.

The Consumer Rights Directive[5] has a different scope: it concerns the consumer's contractual rights and protections in the context of consumer contracts including information duties, withdrawal rights and, where applicable, requirements relating to contract formation. As for telemarketing, it includes distance contracts between traders and consumers and contains provisions on, among other things, pre-

[3] See https://eur-lex.europa.eu/eli/dir/2002/58/oj/eng
[4] See https://iccwbo.org/business-solutions/the-icc-advertising-and-marketing-communications-code/
[5] See https://eur-lex.europa.eu/eli/dir/2011/83/oj/eng

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contractual information, specific rules for contracts concluded by telephone, confirmation of the contract and the right of withdrawal. **The Directive thus assumes that telemarketing is already taking place or may take place. It is therefore not concerned with the right to initiate the call, but with the terms of the sale.**

Like the Consumer Rights Directive, the Unfair Commercial Practices Directive has the aim of, amongst other, protecting the economic interests of the consumer and the right to information. **The Unfair Commercial Practices Directive[6] however differs from the other two in that it does not confer individual rights but is instead aimed at regulating market conduct by prohibiting commercial practices deemed unfair.**

The difference between the directives can therefore be expressed as follows: the e-Privacy Directive regulates the moment of communication, while the Consumer Rights Directive regulates the moment of contract formation. Between them sits the Unfair Commercial Practices Directive, which regulates the content of the call. The directives thus complement one another. The e-Privacy Directive is primarily aimed at protecting privacy, while the other two directives are motivated by both the aim of protecting the economic interests of the consumer and the right to receive information.

So, if telemarketing calls where to be divided into three parts i.e. the placement of the call, the conversation (marketing) and the agreement (contract) each part is governed by its "own" directive. The conditions for part one (making a telemarketing call) are governed by the e-Privacy Directive while the Unfair Commercial Practices Directive sets the standard for part two (the trader's conduct and the information conveyed during the call). Part three is regulated through the Consumer Rights Directive which determines when and how a consumer may become bound by a distance contract, including requirements for written confirmation where applicable. This division of functions explains why the e-Privacy Directive should not be read as a general consumer-protection instrument, but as a privacy-specific

[6] See https://eur-lex.europa.eu/eli/dir/2005/29/oj/eng

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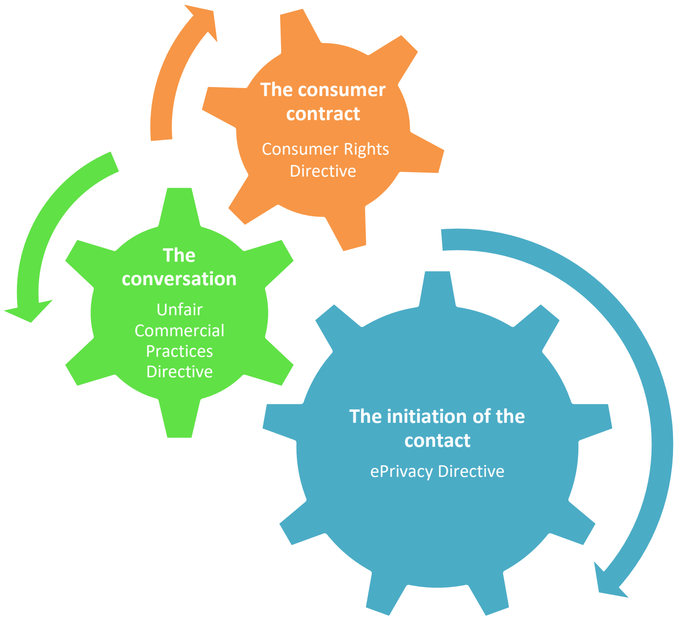
rule whereas the legal effects of what happens during and after the call are governed by consumer law.

Visual 1: the interplay between the different European legislations regulating telemarketing



An important additional point concerns **the scope of harmonisation.** The two consumer-law directives are full-harmonisation directives, which means that, as a general rule, Member States may not introduce rules that are more or less stringent than those permitted by the directives. As regards the e-Privacy Directive's rules on live telemarketing, harmonisation is structured differently but is nevertheless binding in the sense that the Union legislature has exhausted the permissible regulatory models. Under Article 13(3), Member States must choose between an opt-in system and an opt-out system. It follows that they cannot introduce an arrangement outside that framework. For example, **a general and blanket ban on telemarketing would go beyond the framework permitted by the Directive. A national provision prohibiting all kinds of telemarketing would also go beyond the fully harmonised provisions of the Unfair Commercial Practices Directive (under which – subject to certain limited exceptions –**

persistent and unwanted telephone contacts are in all circumstances to be regarded as unfair).[7]

It is important to emphasise that sector-specific prohibitions on telemarketing may be possible in certain cases, for example to protect public health. Examples of sector-specific prohibitions can be found in France, Italy, Spain and Sweden, among others. Compiling and analysing these sector-specific prohibitions falls outside the scope of this report, but such studies would be desirable to improve the overall knowledge base.

1.2. EU law sets the framework for the design of consents including telemarketing calls

When the e-Privacy Directive addresses consent, it is clear that the rules on consent do not include any special channel-specific standard. **Instead, the Directive expressly refers to general data-protection law.** Under Article 2(f) of the Directive, "consent" by a user or subscriber must correspond to consent under the data-protection framework, and recital 17 clarifies that consent within the meaning of the Directive is to have the same meaning as under data-protection law. Since the Data Protection Directive[8] was replaced by the General Data Protection Regulation (GDPR); this means that **the GDPR concept of consent governs**.

Under the e-Privacy Directive, consent must meet the requirements of Article 4(11) GDPR and Article 7 GDPR, meaning, among other things, that it must be freely given, specific, informed and unambiguous, and must be capable of being withdrawn easily. **Consent that is valid under the GDPR is therefore also valid under the e-Privacy Directive, while consent that does not meet the GDPR's requirements cannot be accepted under that Directive either.** This link has also been confirmed by the Court of Justice of the European Union.[9]

In plain terms, this means that it is not possible to impose different and stricter rules for consents linked to telemarketing. This also explains why

[7] Point 26 of Annex I
[8] 95/46/EC
[9] The Planet49 case (C-673/17) - https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62017CJ0673

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requirements for binding centralised consent registers (national "yes, please" registers) cannot be introduced as they would mandate national channel-specific consent standards for telemarketing.

1.3. The debate on the regulation of telemarketing often gives too much weight to the privacy perspective

As the review of the legal position shows, EU law allows telemarketing to be regulated in several ways. Nevertheless, debates in Member States tend to give considerable weight to privacy aspects when the issue has been discussed. This may be because EU law presents a choice specifically linked to privacy[10]: either opt-in or opt-out. Opt-in is often described as a ban on so-called "cold calling".

The bias towards privacy aspects risks causing broader discussions on how telemarketing can be regulated with a focus on consumer protection to give way to a binary debate about opt-in or opt-out. **This in turn raises an important follow-up question: whether opt-in actually provides a higher level of consumer protection than opt-out in the way many assume.**

2. The potential consumer benefits of the opt-in model are difficult to substantiate

2.1. Despite years of political debate, robust research and comparative studies are lacking

Despite a fairly intensive debate on telemarketing in several Member States, there is strikingly little empirical research on the advantages and disadvantages of opt-in and opt-out. There are no studies that compare the models in depth. The academic material that may be relevant comes from adjacent areas, such as direct marketing more generally, data collection and data protection, marketing studies on customer behaviour, and choice-architecture studies.

Research from adjacent fields can sometimes be used to transfer arguments to telemarketing. This applies, for example, to privacy and

[10] See https://eur-lex.europa.eu/eli/dir/2002/58/oj/eng (recital 40)

consent issues and to research on consumer behaviour where similarities are likely to exist between different communication channels. However, **there are significant weaknesses in using research from other areas.** One reason is that other parts of direct marketing are more often subject to consent requirements (e.g. email marketing), which complicates comparative analyses. In this context, it is worth highlighting why EU legislation does not systematically require consent for telemarketing. The reason is that the cost of using telemarketing is significantly higher than for other direct-marketing channels which may be more easily scalable, which in turn reduces the risk of unsolicited calls and justifies a different form of regulation.

Table 1: comparison of telemarketing with other channels and the resulting policy implications

Dimension	Telemarketing	Other channels	Implications for comparability in a policy context
Regulatory baseline	Opt-in and opt-out models	(Soft) opt-in models more common	Consumer behaviour and complaint rates are strongly influenced by the applicable consent regime. Evidence generated under an opt-in framework may therefore reflect the effects of consent requirements rather than the characteristics of the communication channel itself.
Costs for companies	Very high (human interaction)	Very low (automation)	The cost of contacting consumers influences how often and how broadly businesses engage in marketing. Findings regarding contact frequency, nuisance or marketing volumes may therefore not be transferable between channels with fundamentally different economic structures.

Marketing campaign scalability	Limited (cost and capacity constraints)	Very high (mass targeting possible)	Market practices observed in channels that enable large-scale outreach may generate substantially higher contact volumes than channels constrained by cost or capacity. Evidence on consumer exposure, nuisance or complaint rates may therefore not be directly comparable across channels.
Risks of unsolicited contact	Structurally constrained	High (low-cost repetition)	The likelihood and scale of unwanted contact depend on how easily communications can be repeated. Evidence on the prevalence of unsolicited communications may therefore reflect channel economics rather than consumer preferences or regulatory effectiveness.
Consumer experience	Real-time, interpersonal	Often non-immediate, ignorable	Consumers engage with different channels in different ways. Findings on annoyance, pressure, decision-making or consumer welfare may not be directly transferable where the nature of the interaction differs substantially. In particular, consumer choices observed within consent-based frameworks may reflect both underlying preferences and the effects of the consent mechanism itself.[11]

[11] Recent research found that, in a cookie context, more than half of users accept tracking even when consent choices are presented through a neutral interface. The findings suggest that behaviour observed in consent-based communication channels may reflect cognitive factors in addition to consumer preferences. See: https://www.nber.org/system/files/working_papers/w34025/w34025.pdf.

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Policy objective	Managing pressure and fairness of interaction	Managing volumes and data use	Evidence generated to address one regulatory concern may not fully address the concerns present in another channel.[12]

Among the arguments advanced in favour of opt-in in the limited research available are greater respect for personal privacy, a higher degree of self-determination and digital control over one's own personal data[13], and the possibility that opt-in could lead to higher-quality sales[14] because the model could be assumed to strengthen customer loyalty and customer relationships.[15]

Among the arguments frequently used in favour of opt-out are that the system is tried and tested, and that the model benefits freedom of enterprise and is more proportionate than the alternative. Proponents emphasise that opt-out facilitates competition and market access, not least for small and medium-sized enterprises and for companies seeking to enter a new market, as well as for non-profit organisations.[16] There is also research showing that opt-in create a so-called "selection bias" whereby only certain consumers are reached, which may restrict competition and access to information and thereby lead to fewer offers and potentially higher prices for consumers. [17] In addition, it is highlighted that opt-out reduces the risk of an unhealthy behaviour relating to consent including aggressive consent collection.

There is some support in the research for the view that telemarketing is perceived as somewhat less aggressive in opt-in countries, partly because

[12] Evidence generated to address challenges associated with digital choice architecture and interface design may not be directly applicable to telemarketing, which involves a fundamentally different consumer interaction. Research has shown that digital interface design and dark patterns can influence consumer decision-making and lead consumers to make choices that are inconsistent with their stated preferences. It also found that transparency-based remedies are often ineffective in countering such effects. See: https://op.europa.eu/en/publication-detail/-/publication/606365bc-d58b-11ec-a95f-01aa75ed71a1.

[13] See for example https://www.kkv.fi/sv/aktuellt/meddelanden/konsumentombudsmannen-konsumentforbundet-och-dataombudsmannen-kraver-att-telefonforsaljning-gors-tillstandspliktig/

[14] See for example https://ttmc.co.uk/data-services/email-opt-ins-gdpr

[15] See, among others, https://www.tandfonline.com/doi/full/10.1080/23311975.2023.2184244

[16] See, among others, https://pubmed.ncbi.nlm.nih.gov/36853745/

[17] See, among others, https://www.sciencedirect.com/science/article/abs/pii/S016762451630049X and https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1600259

companies in opt-out countries can target individuals who have not registered.[18] However, the tendency is not clear and cannot be explained solely by the model applied. Other factors, such as market structure, compliance and cultural differences, may also play a role. It is also important to remember that most sales calls, even in countries applying opt-out, are made to existing customer contacts. **Since these are often exempted in both opt-in and opt-out environments, direct comparisons become significantly more difficult**.

In simplified terms, there is a belief that opt-in provides increased consumer protection through better privacy protection, while proponents of opt-out tend to emphasise arguments concerning freedom of enterprise and proportionality, as well as the view that opt-in works less well in practice than "on paper".

The absence of research makes it more complicated to answer whether opt-in improves consumer protection in the way sometimes suggested in the debate. Moreover, findings from studies on other communication channels may not be directly transferable to telemarketing given the important differences in their regulatory frameworks, economic characteristics and modes of consumer interaction. As a step towards improving the data basis, the next section of the report looks at complaint statistics in four EU Member States – two established opt-in countries and two established opt-out countries – to shed light on potential differences.

2.2. Differences in application and complaint statistics complicate comparisons

Searches for the number of complaints per 100,000 inhabitants in two comparable opt-out countries (Finland and Sweden) and two comparable opt-in countries (Germany and Austria) does not provide considerable clarity. Although complaints appear to be lowest in Sweden (approximately 20 complaints, of which seven concerned breaches of the do-not-call

[18] See, among others, https://bm.hkust.edu.hk/bizinsight/2017/02/how-opt-out-affects-other-consumers

register in 2019)[19], higher in Germany[20] (approximately 45-50 complaints in 2024), and unclear in Finland and Austria.

It is important to emphasise that the few differences that can be identified appear to be due more to the different reporting systems than to any real incidence of complaints. This is because some countries count all advisory contacts, while others count only formal complaints. Differences also depend, not only on how much telemarketing takes place, but also on:

(i) how easy it is to submit a complaint,
(ii) whether the receiving authorities count all consumer contacts or only formal complaints, and
(iii) whether statistics only include fraudulent calls or only commercial telemarketing.

In Sweden, for example, many complaints appear to be handled through consumer advice rather than through formal complaints. A potentially higher proportion of complaints in other countries is probably due to their consumer authorities tending to register more contacts as complaints.

The only truly robust conclusion that can be drawn from the material collected is that there is a lack of data enabling sound comparisons between countries. If, notwithstanding the above, one were to venture some overall individual conclusions regarding the countries reviewed, it appears that the number of complaints in Sweden has decreased dramatically over time[21], while Germany shows a clear increase, most recently by six per cent between 2024 and 2025.[22] For Finland and Austria, public open data is lacking to confirm trends. It is nevertheless important to emphasise that, for the reasons mentioned, data cannot reliably be compared between countries, but only within countries.

Looking instead at how many complaints result in cases pursued by the responsible authorities in each country, there are only verifiable numbers

[19] See https://www.nixtelefon.org/nyheter/rekordfa-anmalningar-om-oonskad-telefonforsaljning
[20] See https://www.bundesnetzagentur.de/1044790
[21] See https://www.nixtelefon.org/nyheter/rekordfa-anmalningar-om-oonskad-telefonforsaljning
[22] See https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/EN/2026/20260126_Utelefonwerbung.html?nn=694186

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for Germany, yielding 0.013 pursued cases per 100,000 inhabitants in 2024.[23]

The review suggests that it is difficult to find sufficiently comparable and reliable data to draw robust conclusions in favour of either model, at least on the basis of the data collected. In other words, the potential advantages of both models appear difficult to demonstrate in this respect.

Despite data/evidence deficiencies, a central question remains: **why does the analysis reveal no tangible advantages for the opt-in model, given that its primary argument is that consent offers stronger consumer protection?**

The following three sections qualitatively highlight areas that may explain why the data fails to show clear advantages for the opt-in model.

2.3. Potential reasons why the consumer-protection benefits of opt-in may be lower than expected

2.3.1. Consent as a universal solution is increasingly being questioned

Consents are often broadly worded to certify that they cover multiple channels and future forms of marketing. This is done, for example, through technology-neutral wording such as "contact by telephone or other electronic means of communication", which may include, for example, SMS, messaging apps such as WhatsApp, email and push notifications. Consents are also often future-proofed through wording such as "current and future communication channels and methods". In this way, companies seek to ensure that a single consent can be used for several forms of marketing, both technologies that currently exist and those that may emerge. In addition, the wording often covers so-called "automated systems", which may include robocalls, AI-generated calls and automated SMS campaigns.

Consents are also often drafted so that the same marketing consent can be used by several organisations, including through wording such as

[23] See https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/EN/2025/20250120_Telefonwerbung.html?utm_source=chatgpt.com

"companies within our group" and "partners". In addition, consent collection is often linked to account registration, newsletter subscriptions or other types of communication.

Since the e-Privacy Directive and the GDPR entered into force (in 2002 and 2018 respectively), the introduction of consent requirements has been a widely used method within the EU with the aim of strengthening privacy protection. **That view has partly changed in recent years since consents have not delivered the desired results, partly due to perceived inflation in consent requests.**

There is evidence that increased consent requirements make things more difficult for consumers, who must assess and decide exactly what they are consenting to and in relation to whom. This is especially evident when, for example, the phrasing of consent requests is too complex for individual consumers to fully grasp. [24]

Because the opt-in framework introduces an additional layer of consent requests, and because consents are most often drafted to capture several different marketing methods, studies on consent in marketing areas other than telephone are relevant, particularly since no specific studies on consent for telephone marketing have been conducted.

The European Commission has used the **term "consent fatigue" to describe the growing challenge that consumers to a large extent become tired of privacy notices and cookie banners and consent to them without first reading them, leading to hasty decisions that do not necessarily reflect the consumer's true preferences.** [25] Research also shows that many consumers may have difficulty understanding what they are actually consenting to because the information can be complex.[26]

In the longer term, **increasingly extensive consent requirements risk causing consent to lose its function as a meaningful expression of**

[24] See, among others, statements by the Federation of European Data and Marketing (FEDMA)
[25] See, among others, https://arxiv.org/abs/1909.02638, https://arxiv.org/abs/2208.05786, https://www.bruegel.org/analysis/eu-data-processing-consent-reform-must-account-market-incentives and http://ainvest.com/news/cognitive-biases-distort-digital-privacy-market-2601/
[26] See https://link.springer.com/article/10.1007/s12525-019-00332-3

individual choice.[27] Analyses by the Organisation for Economic Co-operation and Development (OECD), among others, show that most consumers do not change default options in consent requests, indicating both that they are not making engaged choices and that they accept marketing or data processing without genuinely wishing to do so. [28] Overall, more and more studies question whether consent requests have the practical effectiveness from a consumer-protection perspective that might be assumed. Further discussion of this appears in the third section of this report.

Some of the abovementioned challenges are inherent to consent-based models. In comparison, opt-out systems, although not without risks, place less emphasis on repeated consent requests and more emphasis on the effectiveness of suppression mechanisms.

Taken together, these findings suggest that the consumer-protection benefits commonly attributed to opt-in systems should not be taken for granted. While consent can provide consumers with an important sense of control for the consumer, its effectiveness depends on consumers being able to understand and meaningfully evaluate what they are consenting to. The growing complexity of marketing ecosystems and emerging technologies raises questions as to whether those conditions are always met (and achievable) in practice.

2.3.2. Consent collection takes place both within companies and through professional intermediaries

Although there is a significant market in Europe for the commercial collection and brokering of marketing consents for telemarketing, there is no aggregated data on the size of the commercial leads and consent markets.

[27] See, among others, https://iapp.org/news/a/how-to-avoid-consent-fatigue
[28] See https://www.oecd.org/en/publications/oecd-digital-economy-outlook-2020_bb167041-en.html

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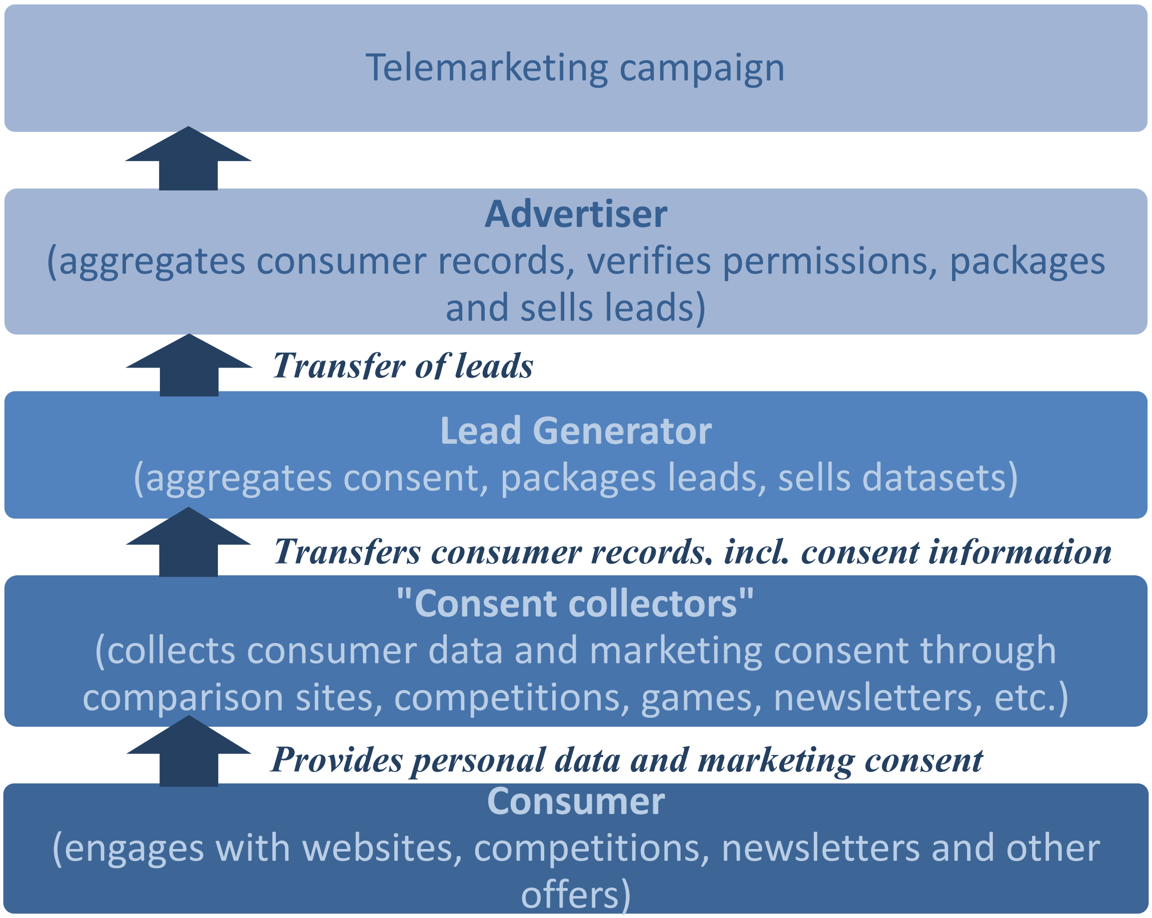
<u>Visual 2:</u> Overview of the typical consent collection in the telemarketing ecosystem



While lead generation (focus on the commercial opportunity) and consent collection (focus on legal compliance) are two distinct activities from a conceptual point of view, the distinction is often blurred in practice. Many companies both identify potential customers and collect the marketing permissions that enable those consumers to be contacted by advertisers, including for telemarketing purposes. This distinction is also reflected in EU law: consent primarily concerns the lawful use of personal data and marketing communications, whereas lead generation may additionally raise questions relating to the fairness and transparency of commercial practices (see also section 1.1.). In practice, however, policy discussions relating to telemarketing often focus more heavily on consent and privacy compliance than on the commercial practices used to generate leads.

Consent and lead generation markets are difficult to estimate and define because lead collectors work with different marketing channels in parallel (such as email, direct mail and telemarketing). Consequently, **the consents are broadly drafted to cover as many channels as possible**.

In practical terms, consent collection works by linking the collection to a service perceived as attractive, prompting consumers to share their personal data and give their consent.[29] Common examples include comparison sites, online games, competitions and quizzes, but consent collection can in practice be linked to almost any type of service. It can therefore also function as a side business for companies whose main purpose is to provide various online services, but which also collect, process and resell consents. **Consent collection works above all because many consumers do not spend time reading long, complex and repetitive text passages and analysing what they are consenting to and the difficulty of assessing the scope of permission granted.**

In their marketing, **consent collectors emphasise their methods for securing high-quality consents, which are often defined as broad, well documented and "opt-in ready"** (meaning consent that is suitable across multiple channels).[30] The higher the quality, the higher the value of the consent on the market, and the greater legal certainty tends to be. The value of consent increases further when additional data points of the consumer are collected. Besides, professional consent collectors are more prominent in opt-in countries, because consents in opt-in environments have greater economic value.

It can be noted that there are no studies on the scale and working methods of lead generators. Nor are there any studies on how lead generation affects different social groups, but it may be assumed that, for example, consumers with limited language proficiency face greater challenges in absorbing

[29] See https://www.sciencedirect.com/science/article/pii/S1094996817300191
[30] There are many actors in the market, such as Egentic and Mediaprism.

complex information about what they are consenting to. In this context, it should be mentioned that consent collectors often target younger people through, for example, game-like online services. Given the limited awareness of professional consent collection, **there is a risk of a widespread misconception that consents are only gathered by individual brands** – a concern notably raised by the Swedish Consumer Agency. [31] By contrast, opt-out systems generally create less demand for the commercial collection and data brokering of telemarketing consents, since marketing activities do not primarily depend on prior permission. Intermediaries may nevertheless play an important role, for example through Robinson lists, preference-management services and comparable suppression mechanisms. However, unlike consent collectors, these intermediary actors typically facilitate the implementation of consumer objections rather than the creation and commercial exploitation of marketing permissions. The commercial incentives associated with such activities are therefore fundamentally different.

The above observations suggest that opt-in systems may not always operate in the way consumers intuitively expect. Rather than consent being obtained directly by the company that ultimately conducts the marketing, consent is often collected, traded and "reused" through a broader ecosystem of intermediaries. This may make it more difficult for consumers to understand who may contact them and on what basis, potentially reducing the consumer-protection benefits commonly associated with consent-based approaches.

2.3.3. Consumers risk consenting to more than they realize, particularly as AI advances

As mentioned, there are specific concerns regarding the design of consents linked to the rapid development and use of AI in marketing. Already today, many consents are drafted to enable robot/AI calls for sales purposes. **This is a development that can be expected to increase, and may entail significant risks for consumers, particularly in Member States applying**

[31] See https://publikationer.konsumentverket.se/var-verksamhet/redovisningsrapport-20255-telefonforsaljning

opt-in, since consents for telemarketing are collected there to a much greater extent. In opt-in models, telemarketing activities depend more heavily on the prior collection and commercial acquisition of marketing consents.

AI can make far more calls than human operators. Furthermore, **highly realistic AI voices can analyse consumers' responses and emotions in real time, adapting arguments and tone to maximize the likelihood of a purchase.**[32] There is a particular risk for vulnerable groups such as older people and those in financial difficulty, given AI's ability to identify and potentially exploit vulnerabilities. AI's analytical and profiling capabilities also raise questions about data protection, including in relation to the GDPR[33], but could – based on well-drafted consents – become part of companies' telemarketing toolbox.

Previous technological shifts show that new technologies, such as AI, are rapidly adopted in marketing. Within a few years, it should be possible to make an initial assessment of how common robot/AI sales calls become. Since consent collection for telemarketing mostly takes place in opt-in countries, AI calls are likely to become more common there (AI calls based on opt-out are not permitted under the e-Privacy Directive, see Article 13(1)).

In opt-out systems, consumers face different challenges. Since marketing calls do not generally depend on prior consent, concerns are less likely to arise from the design, breadth or future interpretation of consent requests. Besides, AI-calls are not allowed under opt-out regime in the e-Privacy Directive. More broadly, however, as AI enables increasingly sophisticated profiling and targeting, questions about the large-scale collection, sharing and use of consumer data may become increasingly relevant in both opt-in and opt-out environments. However, AI-calls are more likely to start/expand in an environment where the structure for collection of the necessary consent is already in place.

[32] See, among others, https://arxiv.org/abs/2508.06457
[33] See, among others, https://arxiv.org/abs/2410.15369

Overall, developments in AI suggest that both opt-in and opt-out systems may face consumer-protection challenges, albeit of a different nature.

3. How do opt-in and opt-out models affect consumer-protection?

After outlining conditions that affect regulatory effectiveness mainly in opt-in environments, the next sections compare the opt-in and opt-out models from a consumer-protection perspective.

3.1. Consumer protection benefits depend on underlying assumptions and implementation

Both opt-in and opt-out models seek to protect consumers, but through different mechanisms and with different trade-offs. Opt-in aims to prevent marketing contact unless the consumer has granted prior permission, whereas opt-out allows marketing contact but seeks to ensure that consumers can stop it easily and effectively.

As a result, a key consumer-protection advantage of opt-in systems is that they give individuals the opportunity to decide, in advance, whether they wish to receive telemarketing communications. **This can strengthen consumers' feeling of control and autonomy** by reducing the likelihood of unwanted contact occurring in the first place. At the same time, from the perspective of the consumers' economic interests and right to information, the effectiveness of the opt-in model depends on consumers being able to distinguish between communications that are unwanted and those that may provide useful information about products, services or market opportunities that consumers want to receive.

In comparison, a key consumer-protection advantage of opt-out systems is that consumers can express their telemarketing preferences through a centralised and often long-lasting mechanism, such as a do-not-call register. **This may be easier to manage in practice** than tracking and withdrawing multiple consents over time. Opt-out systems also **support consumers' economic interests** by facilitating access to information about products and services while preserving the possibility for consumers to stop unwanted communications where they no longer wish to receive them.

This being said, the consumer-protection benefits of either model depend not only on its legal design and implementation, but also on the behavioural assumptions on which it is based. Opt-in assumes that consumers can make informed choices at the point of consent, while opt-out assumes that consumers are aware of and able to exercise their right to object. **If these assumptions do not hold in practice, the level of consumer protection delivered by the model may differ significantly from its intended objectives.**

Importantly, **these assumptions may not hold equally across all Member States.** Factors such as consumer awareness, language barriers, demographic characteristics and the visibility of consumer-protection mechanisms may differ considerably between national markets. As a result, the relative benefits of opt-in and opt-out systems may depend, at least in part, on the national context in which they operate. For example, in markets characterised by greater linguistic diversity, consumers may face additional challenges in understanding consent requests or becoming aware of available opt-out mechanisms.

3.2. Consumer-protection challenges linked to opt-in

In recent years, EU consent requirements – including those for marketing – have steadily increased. This may be one reason why such requirements can intuitively be perceived as a stronger method than opt-out from a consumer-protection perspective.

The report shows a more complex picture, as opt-in and opt-out focus on privacy rather than consumer protection. A true assessment must combine theoretical analysis with actual consumer behaviour.

Theoretically, opt-in models are attractive because prior consent empowers consumers to decide whether they wish to be contacted. In practice, however, the reality is far less clear. In a report by the Swedish Consumer Agency – which is strongly critical of telemarketing as a phenomenon – the authority points out that, in practice, an opt-in model (as traditionally applied among EU Member States) risks functioning significantly less well than the model intuitively suggests. According to the report, this is due to several reasons, including that opt-in models are neither as straightforward as they appear nor easy to apply:

- the model in practice entails clear risks of circumvention and that "a [traditional] opt-in solution does not address the fundamental problem";
- one must expect companies to "circumvent and breach the rules", partly because opt-in tends to create incentives for a "hunt for consents", which in practice undermines the ability of ordinary consumers to make informed choices.
- the opt-in model is difficult to apply because companies can "claim that consent exists" or because consents are drafted too vaguely.
- there is a risk that consumers may be "induced to give consent" through competitions and offers, and that "intermediaries and brokers" can create gaps in the chain of responsibility as it becomes unclear to whom the consumer has given consent and for what.
- In practice, it can be difficult for consumers to withdraw consents when they lack information about when, how, and to whom they were granted.[34]

Taken together, **the Swedish Consumer Agency concludes that traditional opt-in is not recommended because it risks shifting the problem from unwanted calls to a "consent market" that gives rise to new types of consumer problems.** The report emphasises that these problems become particularly severe when consents are worded broadly, for example when they also authorise calls from 'other companies and organisations'. Instead of traditional opt-in, the report argues for a general and total ban on telemarketing.

[34] See https://publikationer.konsumentverket.se/var-verksamhet/redovisningsrapport-20255-telefonforsaljning (pages 48-49 and 59)

Based on the reasoning of the Swedish Consumer Agency, inter alia, the following circumstances help explain why opt-in models may fail in practice, thereby falling short of expected consumer protection standards:

- Under an opt-in model, consent acquires economic value—unlike in opt-out systems. This incentivizes companies to maximize collection efforts and draft consent agreements as broadly as possible to future-proof them across marketing channels. Crucially, this increases the risk of clauses designed to permit automated or AI-driven calls.
- Opt-in frameworks encourage a commercial market for consent to emerge. This ecosystem includes professional data brokers and collectors using sophisticated methods to gather consent agreements, which are subsequently monetized and sold to multiple clients.
- Tracking and managing consent becomes nearly impossible for individuals, severely decreasing the feeling of control (one main characteristic of opt-in models). Consumers must contact each entity individually to withdraw it, a process further complicated by consent being traded through complex, opaque supply chains. Over a lifetime, a single consumer may inadvertently grant tens of thousands of such consents or more.
- Vulnerable demographics – such as older consumers and those with limited language proficiency – are disproportionately affected. Navigating opt-in environments requires absorbing vast amounts of complex information to make genuinely informed choices.
- The initial consumer-protection benefits of an opt-in framework risk eroding over time as the market adaptively circumvents the spirit of the regulation.

It should be emphasized that **the full extent of these issues remain undocumented by robust European studies, particularly regarding the inner workings of the consent market in greater detail, the number of consents a consumer typically grants during a lifetime, and the degree to which consumers in reality exercise the choices that consent entails in the way policymakers intended**.

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3.3. Challenges linked to opt-out in relation to consumer protection

The main challenge with opt-out systems, from a consumer perspective, is that consumers must take an active step to express their telemarketing preferences. From a practical consumer perspective, however, several other considerations matter. Above all, three parameters are important: (i) the level of consumer awareness of the opt-out system and the available suppression mechanisms, (ii) the position an opt-out system has among consumers in a particular market, and (ii) how opt-out registers work in practice. The latter includes issues related to exemptions and how easy registration in do-not-call registers is for consumers.

One way to assess the position of an opt-out model in a specific market is therefore to look at consumer awareness – specifically, whether consumers know how the system works and which organisation or brand to contact in order to opt-out.

Here too, **robust comparative studies across different opt-out systems are lacking.** The available sources are national surveys conducted using varying methodologies. While direct comparisons between surveys are not possible, they do suggest that awareness levels vary considerably across systems. The Swedish opt-out system (NIX) stands out with by far the highest awareness rate – recognised by as many as 90 per cent of consumers, according to independent research.[35] Surveys indicate that awareness of the French opt-out system, Bloctel, is 65 per cent.[36] A corresponding survey in the United Kingdom indicates awareness of 56 per cent.[37]

As with awareness surveys, there are no comparative studies on what proportion of the population is registered in opt-out registers. This is partly due to methodological problems, as the same person may have several subscriptions, but also because registers may include subscriptions that

[35] See https://www.nixtelefon.org/nyheter/allt-farre-overtradelser-mot-nix
[36] See https://www.ipsos.com/fr-fr/les-francais-se-protegent-ils-suffisamment-contre-le-demarchage-telephonique
[37] https://www.dma.org.uk/resources/report/tps-what-consumers-say

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are no longer used, or both fixed-line and mobile subscriptions. To make a correct comparison, a common survey method focusing on the proportion of registered persons rather than registered subscriptions would probably be required.

Most opt-out systems – like most opt-in frameworks – include exemptions for existing customer relationships, though the precise design of these exemptions varies. In Finland and Sweden, for example, calls to existing customers are permitted despite registration in the opt-out register if the sale concerns “similar products or services”. For Sweden, the exemption is stated to apply for 12 months after contractual obligations have been fulfilled. [38] In Ireland, the country’s data-protection authority also describes how sales calls may rely on an “existing relationship” irrespective of opt-out registration, provided that the consumer has not expressly objected.[39] Belgium takes the opposite approach: no exemptions for existing customer relationships apply unless the consumer has given explicit consent.

A further difference in the application of different opt-out models is whether registrations are permitted only for private subscriptions, or whether company-owned subscriptions can also be registered. It is worth noting that EU legislation targets individuals, but nothing prevents an opt-out system from being designed to cover business-owned subscriptions as well. Since small business owners often use the same subscription both privately and for the business and given that employers sometimes offer employees a telephone subscription that may also be used privately, there is in practice – from a consumer-protection perspective – a grey area between private subscriptions and business subscriptions. It is more common that business subscriptions cannot be registered in opt-out registers than the opposite, but, for example, business subscriptions are covered by the Irish opt-out register.[40]

[38] See https://nixnamnden.se/
[39] See https://www.dataprotection.ie/en/organisations/rules-electronic-and-direct-marketing/ndd-faqs?utm_source
[40] See https://www.dataprotection.ie/en/organisations/rules-electronic-and-direct-marketing/ndd-faqs?utm_source

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An important advantage of opt-out compared with opt-in is that consumers can express their preference regarding telemarketing in one centralised place. In practice, this contrasts sharply with opt-in systems, where a consumer wishing to withdraw consent must contact each company or organisation individually. Another advantage is that the risk of aggressive consent collection, consent trading and consents permitting robot/AI calls is reduced. In some cases, application may also be more effective with opt-out, particularly where there are self-regulatory bodies that relieve the burden on public-authority supervision. This is particularly relevant when such bodies are directly linked to or even managing opt-out registers.

The following points highlight challenges inherent to an opt-out framework:

- The model requires a high level of consumer awareness in order to be effective, which, among other things, makes it difficult to introduce in new markets.
- Opt-out presupposes knowledge on the part of the consumer. Consequently, vulnerable consumers/demographics, including consumers with limited language proficiency, may be unaware of the possibility of registering in a do-not-call register, which may make such consumers more exposed.
- If an opt-out solution has a proliferation of regulatory exemptions, the model may be perceived as unclear, which risks undermining its effectiveness.

To further assess the real effectiveness of the opt-out model, **studies would be desirable on the proportion of consumers who would like to decline telemarketing but, for various reasons, do not register in do-not-call registers, and on why this is the case**. A definitive assessment of opt-out effectiveness requires **targeted research into consumer behaviour – specifically whether there is a segment of consumers who prefer to decline telemarketing but remain unregistered.** Additionally, **studies comparing the design of exemptions and**

awareness levels based on a common methodology would also be welcome.

4. Overall assessments and conclusions

The report identifies significant knowledge gaps regarding the effects of different telemarketing regulatory models on consumer protection. Current evidence is insufficient to draw general conclusions about which model is preferable from a consumer-protection standpoint.

The report underlines the importance of national context when evaluating regulatory models. For example, the report finds no evidence that a shift to opt-in would generally improve consumer protection – particularly where it would replace a well-established opt-out system with strong consumer awareness and broad acceptance. Equally, there is no clear evidence for the converse – that abandoning opt-in in favour of opt-out would, as a rule, be advantageous for consumer protection. Ultimately, there is no empirical evidence supporting the notion that merely shifting from one model to another would improve consumer protection.

A more general difficulty is that the concept of consumer protection is often used imprecisely in this debate. Privacy protection and consumer protection are closely related, but they are not the same. Privacy rules, such as opt-in or opt-out requirements, regulate access to the individual and are designed to protect against unwanted intrusions into private life. Consumer-protection rules, by contrast, address the fairness of commercial conduct, the information given to the consumer, the formation and effects of contracts, and the consumer's ability to withdraw from or challenge a transaction. If these categories are conflated, there is a risk that policy instruments designed primarily to protect privacy are introduced or assessed as if they were consumer-protection measures. This may lead to misplaced expectations: **a rule that raises the threshold for making a call does not necessarily address misleading conduct, aggressive selling,**

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contractual lock-in or difficulties in exercising consumer rights once contact has occurred.

Against that background, it is important to distinguish between privacy protection and consumer protection in the narrower sense. **The opt-in/opt-out distinction under the e-Privacy Directive is primarily a privacy rule: it determines the conditions under which a trader may access an individual through electronic communications.** The rationale behind an opt-in model is to raise the threshold for a particular marketing method — in line with the concern expressed in recital 40 of the e-Privacy Directive that certain forms of unsolicited communications may intrude upon privacy. If that threshold effect does not materialise, however, the consumer-protection benefit is at best uncertain – it may even deteriorate. In the worst case, consumer protection may even be weakened if consumers come to believe that calls they receive must be legitimate simply because only authorised traders are assumed to be able to call them. On the evidence reviewed in the report, a shift to opt-in cannot be assumed to reduce unwanted or harmful calls in practice, especially in the long term. Addressing the latter types of harm instead primarily requires active and continues enforcement against non-compliant traders, or possibly a review of rules on withdrawal rights in relation to, for example, subscription-based contracts.

Since 2010, a few EU Member States have moved from opt-out to opt-in, while no Member State has moved in the opposite direction. This asymmetry gives reason to highlight specific risks associated with a transition to opt-in.

In this regard, the report highlights two developments in particular that may bear on the assessment**: growing concerns about "consent fatigue" and the rise of AI technology.** On AI specifically, experience from earlier technological shifts suggests that AI-generated calls will, where permitted, be used for marketing purposes. The full effects of AI in this context are likely to become clearer within a decade, as the technology and its broader societal implications mature.

The report's overarching conclusion is that further research is needed to strengthen both the evidence base and the basis for policy decisions regarding the effects of different regulatory models. Such research should cover not only opt-in and opt-out, but sector-specific prohibitions as well.

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