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Questions and Answers on Spam and the EU Opt-in Regime

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Can you explain the new 'opt-in' regime in short?

The EU Directive on Privacy and Electronic Communications¹ requires Member States to prohibit by the end of October 2003 the sending of unsolicited commercial communications, or spam, by e-mail or other electronic messaging systems such as faxes, SMS and MMS unless the prior consent of the addressee has been obtained (**opt-in regime**).²

Moreover, direct marketing messages by e-mail or SMS may not conceal or disguise the identity of the sender. They must also include a valid address to which recipients can send a request to cease such messages.

The opt-in regime is mandatory for any e-mail, SMS or fax addressed to natural persons. It is optional with regard to legal persons. Some Member States have chosen to extend the opt-in system to legal persons, other may use an opt-out system.

What about existing customers?

The only exception to the opt-in regime is in cases where contact details for sending e-mail or SMS messages have been obtained in the context of a sale. Within such an existing customer relationship the same company may use them for the marketing of similar products or services as those it has already sold to the customer. Nevertheless, even then the company has to make clear from the first time of collecting the data, that they may be used for direct marketing and should offer the right to object. Moreover, each subsequent marketing message should include an easy way for the customer to stop further messages.

How will Member States enforce this opt-in?

Member States must ensure that sanctions and judicial remedies are in place for infringement of any of the provisions of national law implementing this Directive and create possibilities for victims to claim damages, in accordance with the General Data Protection Directive³.

¹ Article 13 of Directive 2002/58/EC of 12 July 2002 on Privacy and Electronic Communications

(http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_20120020731en00370047.pdf)

² For voice telephony marketing calls, other than by automated machines, Member States may also choose between an opt-in or an opt-out approach.

³ Directive 95/46/EC.

Complaints can generally be lodged with the national Data Protection Authorities that exist in every country. See the list of such authorities at:

http://europa.eu.int/comm/internal_market/privacy/links_en.htm#europe.

When will this opt-in regime be in place?

The date for transposition is 31 October 2003. Member States are in the process of transposing. Note that a number of Member States had already implemented an opt-in approach with regard to unsolicited commercial e-mail under the predecessor of the current Directive. Nevertheless, existing national opt-in legislation may need to be adapted to the specific details as laid down in the new Directive.