The European Guide to Data Law
European Data Law

1.0 Introduction & Definitions

1.1 Introduction

Recent legislation in the European Parliament related to data protection and privacy, and its various implementations within the member states through national legislation, has left some confusion in the minds of European Business-to-Business marketeers on the implications for their direct marketing activities.

With a marketing database of 186,000 European companies and over 883,000 IT and Telecoms end-user decision-makers, EMIG is often asked to provide guidance on these matters when supplying marketing data to its customers across Europe.

In preparing this document, EMIG has applied more than 15 years of knowledge and experience in supplying data within this industry, together with extensive research on the latest situation in key European countries both within and outside the European Community.

It summarises in a few pages our interpretation of the latest legislation as it relates to business-to-business marketing and particularly marketing within the IT and Telecoms markets in which EMIG and its clients operate.

1.2 Definitions

- Personal data – data which relate to a living individual who can be identified from those data.
- Database Owner - the partner(s) of EMIG allowing its clients to use the most recent personal data related to business-to-business marketing within the IT and Telecom markets in which EMIG and its clients operate.
- Data Controller - a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.
- Data Processor – in relation to personal data, means any person (other than an employee of the Data Controller) who processes the data on behalf of the Data Controller. Typical examples of Data Processors are third party mailing houses, data warehousing and outsourcing agencies with access to personal data such as payroll, HR.
- Data Subject – an individual who is the subject of personal data.


2.1 Data Protection legislation

The law is based on the following eight principles, the purpose of which is to make sure that information is handled properly:

They say that data must be:
1. fairly and lawfully processed;
2. processed for limited purposes;
3. adequate, relevant and not excessive;
4. accurate;
5. not kept for longer than is necessary;
6. processed in line with individual rights;
7. secure; and,
8. not transferred to countries without adequate protection.

2.2 Privacy and Electronic Communications (EC Directive) Regulations 2003

The 2003 Regulations deal with the processing of electronic communications traffic data, location data and billing data, calling or connected line identification, directories of subscribers, the security of telecommunications services and the use of cookie type devices. These parts of the Regulations apply to the providers of telecommunications networks and telecommunications services.

The 2003 Regulations also regulate the use of publicly available electronic communications services for direct marketing purposes. Some of the rules apply to both individuals and corporate subscribers, which conduct unsolicited direct marketing activities by telephone, by fax, by electronic mail (this means text/video/picture messaging and email) and by automated calling systems.

All EU member states were required to implement this directive by 31st October 2003. As with the Data Protection Act, however, each country had the opportunity to amend the regulations to take into account cultural differences and differing business needs, and therefore not all member states were ready for implementation by this date.

The fact that each country has the opportunity to amend the regulations means that Pan-European Marketers need to be aware of the differences in regulations in different member states before carrying out marketing campaigns.

In all cases, it is the law of the country where the Data Controller is based that will apply.

For example, if EMIG have collected data through its UK partner, Rhetorik, UK law will apply.

If Rhetorik have collected data on businesses in Italy, UK law will still apply.

The confusion arises where there is more than one Data Controller, for example, where data is collected in the UK by EMIG and sold to a customer based in Germany. In this case, UK law is applicable for EMIG and German law is applicable for the customer. See Section 6, Frequently Asked Questions, for more specific examples or contact your EMIG partner for more information.
3.0 Legal Implications in European Marketing

3.1 Direct marketing methods

Before describing the variations discussed in section 2, it is important to define the three main types of marketing affected by the legislation.

- Telemarketing - The use of publicly available telecommunications services for the purposes of making unsolicited calls, for direct marketing purposes.
- Fax marketing - The use of publicly available telecommunications services for the unsolicited communication of material, for direct marketing purposes, by means of facsimile transmission, whether the called line is that of a subscriber who is an individual or that of a corporate subscriber.
- E-marketing - The use of electronic mail services for the unsolicited communication of material for direct marketing purposes to a personal or business e-mail address.

3.2 Business-to-business marketing implications by country

The following table provides a summary of the key implications for each of the three direct marketing methods brought about by national legislation or pending legislation in each European country.

<table>
<thead>
<tr>
<th>Country</th>
<th>Outbound Telemarketing</th>
<th>Fax Marketing</th>
<th>Email Marketing</th>
<th>Current Acts</th>
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<tbody>
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<td>Austria</td>
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<tr>
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<td>United Kingdom</td>
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</tbody>
</table>

Notes:
(1) Opt-in - Prior consent must be received from the recipient before the marketing method can be used
(2) Opt-out - No prior consent is required but the recipient must have the option to request removal from future marketing activity
(3) Data gathering - Although this table summarises data protection implications based on the legal situation in each country as specified in Section 3.2, it is the law of the country where the Data Controller is based that will apply. For example, EMIG gather information on UK, Norway, Sweden, Finland, Denmark, and Ireland in the UK – UK law will apply for the data gathered by EMIG for all these countries.

Following are details specific to each country:

- Austria - Opt-in legislation applies for all three forms of direct marketing.
- Belgium - Opt-out applies to named individuals for telemarketing. Opt-in is required for fax marketing and email marketing.
- Czech Republic - Opt-in legislation applies for all three forms of direct marketing.
- Denmark - Opt-out applies to named individuals for telemarketing, opt-in for fax marketing and email marketing. The option must be given to allow opt-out on each email marketing communication.
- Finland - Opt-out applies to named individuals for telemarketing, fax marketing and email marketing. The option must be given to allow opt-out on each email marketing communication.
- France - Telemarketing, fax and email marketing are opt-out when marketing to all named individuals. However, email marketing can only be undertaken without prior consent if the email is business/function related and an opt-out option has to be provided for both the specific marketing activity and the database itself.
- Germany - Opt-in legislation applies for all three forms of direct marketing to all named individuals, SOHO organisations and corporate entities.
- Slovakia - Opt-in legislation applies for all three forms of direct marketing.
- Spain - Opt-in legislation applies for all three forms of direct marketing.
- Sweden - Opt-out applies to all three forms of marketing where the recipient is a named individual. Transfer of data outside the EU is only permissible with the consent of the individual.
- Switzerland - Opt-in legislation applies for all three forms of direct marketing.
- United Kingdom - Telemarketing and fax marketing are opt-out. Furthermore, the Corporate Telephone Preference Service (CTPS) register and a similar register for fax preference (FPS) are in place for named individuals who do not wish to receive these communications. Email marketing is opt-out provided that the email is business/function related and an opt-out option is provided on each communication.
- Norway - Opt-out applies to named individuals for telemarketing. Opt-in is required for fax marketing and email marketing. In addition, there is in existence a legal entity called the ‘Central Marketing Exclusion Register’. Lists need to be cleaned via this register prior to marketing in any medium. Norway is not part of the EU and therefore transfer of any data to Norway should be subject to the usual guidelines for transferring data outside the EU.
- Portugal - Opt-out applies to all three forms of marketing where the recipient is a named individual. The option must be given to allow opt-out on each email marketing communication.
- Slovakia - Opt-in legislation applies for all three forms of direct marketing.
4.0 Best Practice and the Law

4.1 Sourcing data

Data should only be sourced from reputable suppliers who give a written undertaking that they comply with the local and European data protection legislation and The Privacy and Electronic Communications (EC Directive) Regulations 2003. Customers should check the frequency with which this data is updated, as this can not only impact upon legal obligations but also impact on the success of any planned marketing campaign.

4.2 Using data

- Data should only be made available to those individuals who have a need to use that data.
- Systems should be in place to ensure that it is not possible for individuals to copy the data without need or permission.
- Data should be destroyed once it is no longer needed, and in any case once the license period from the Data Vendor has expired. THIS IS A LEGAL REQUIREMENT UNDER EUROPEAN DATA PROTECTION LEGISLATION.
- If the data is passed to a Data Processor during the course of its use in a campaign, customers need, by law, to ensure that the Data Processor has controls in place to safeguard the data and that these are adhered to.
- If the data is to be passed to any country outside the EU, then that country should have legislation in place to protect the data at least equal to the legislation in place inside the EU. Special conditions apply in some countries regarding this – please see individual country notes in Section 3.2.

4.3 Training

All individuals who have a need to use data should be made aware of local and European data protection legislation and The Privacy and Electronic Communications (EC Directive) Regulations 2003, as well as the steps needed to comply with these Acts. EMIG is able to provide consultancy to its customers in this regard.

5.0 How Can EMIG Help?

As a leading database provider for businesses in the Information Communication Technology industry, EMIG not only has an in-depth understanding of the target markets for our customers, but also of the Regulations relating to the data needed for targeted marketing campaigns.

EMIG is a major supplier of IT and Telecoms end user data across western Europe and also has an extensive network of data contacts throughout the world and can offer a competitive brokerage service to complement our own data services.

In addition, EMIG specialises in consultancy advice to its customers on a wide range of topics from Data Protection to more specific tailored advice depending on client needs.

6.0 Frequently Asked Questions

Q. How do I know that the data I have bought complies with data protection legislation?
A. Data should only be sourced from reputable suppliers that comply with the local and European data protection legislation and The Privacy and Electronic Communications (EC Directive) Regulations 2003. Customers should check the frequency with which this data is updated, as this can not only impact upon legal obligations but also impact on the success of any planned marketing campaign.

Q. What happens if I don’t comply?
A. If a breach of the regulations is investigated and the Data Controller is prosecuted, a fine plus unlimited compensation may be awarded to the Data Subject. Each European Member State has differing levels of fines.

Q. What obligations are there on me regarding using data?
A. You should always ensure that the data you are using is relevant to its intended use, accurate, kept secure and not kept for any longer than is necessary. All staff involved in the use of data should be made aware of their legal obligations regarding that data.

Q. Can I e-market business customers?
A. See Flowchart in Appendix 1

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Q. How can EMIG help with data?
A. At EMIG our processes and procedures are believed to fully comply with the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 for direct marketing purposes. All staff involved in the collection of information receive training on the legal implications of all relative legislation and procedures are in place to record the permissions given by contacts. The EMIG license agreement gives guarantees regarding EMIG’s compliance and also covers the legal obligations of the Licensee.
APPENDIX 1

Flowchart to determine if e-marketing is legal

BUSINESS TO BUSINESS

FINLAND, FRANCE, IRELAND, PORTUGAL, SWEDEN & UK

Has contact opted out?

NO

E-MAIL

YES

DO NOT E-MAIL

AUSTRIA, BELGIUM, CZECH REPUBLIC, DENMARK, GERMANY, ITALY, NORWAY, SPAIN, SLOVAKIA, SWITZERLAND & THE NETHERLANDS

Has contact opted in?

NO

DO NOT E-MAIL

YES

E-MAIL

BUSINESS TO CONSUMER

Did recipient consent for the use of his or her e-mail address for commercial purposes?

NO

Did recipient give/send contact details during the course of a sale or negotiation for sale?

YES

Are you marketing your own products/services?

YES

Is recipient aware of your products/services from initial contact?

YES

Has recipient previously been given option to Opt out?

YES

Are sender’s details clear on DM e-mail?

YES

Has opt out facility been provided on DM E-mail?

YES

DO NOT E-MAIL

E-mail

NO

FINLAND, FRANCE, IRELAND, PORTUGAL, SWEDEN & UK

AUSTRIA, BELGIUM, CZECH REPUBLIC, DENMARK, GERMANY, ITALY, NORWAY, SPAIN, SLOVAKIA, SWITZERLAND & THE NETHERLANDS

NO

DO NOT E-MAIL

YES

E-MAIL
European Partners

The EMIG currently consists of 9 marketing companies across Europe.

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