

Guidelines

Direct marketing by telephone

Table of contents

Introduction	3
1. When am I subject to the rules regarding direct marketing by telephone?	3
2. Who is protected by the law regarding direct marketing by telephone?	3
3. What should I do if I want to call or have someone else call some subscribers and offer them a product/service or inform them of a promotional action?	3
4. What do you advise me to do?.....	4
5. What are the possible sanctions?	5

Introduction

As a company, you are likely to advertise either directly or via a sub-contractor: this marketing can be either general or targeted at specific individuals. You therefore foster a commercial relationship with your clients and try to convince new ones to join.

There are legal rules that must be followed if you are to achieve your marketing objectives without bothering the individual consumer. We will remind you of these rules below and even give you some practical tips as well, because it's better to avoid problems before they happen!

The recommendations, positions and other information contained in these guidelines are provided subject to the sovereign discretion of the courts. This means that courts may depart from the content of these guidelines in the context of a dispute.

These guidelines are evolving texts, requiring updates. They can therefore be adapted at any time.

1. When am I subject to the rules regarding direct marketing by telephone?

Direct marketing is a broad concept, that not only concerns companies' marketing actions for their clients, but also covers contacts with prospects, i.e. potential clients.

Contact established by organisations, for example to raise money for charities or to recruit members, is also considered direct marketing.

However, not all contact attempts are considered direct marketing.

For example:

- a company contacting a client to confirm an appointment;
- a company informing a client of a problem that may occur with a product they have purchased.

Direct marketing is a broader concept than what is meant by "advertising". The non-commercial messages are also part of this concept.

2. Who is protected by the law regarding direct marketing by telephone?

Each and every Belgian telephone subscriber is protected, whether a consumer, a company, non-profit organisations, etc.

3. What should I do if I want to call or have someone else call some subscribers and offer them a product/service or inform them of a promotional action?

Under articles VI.111-115 of the [Code of economic law](#) (CEL):

First, you should consult the [list](#) managed by the "Do Not Call Me" association, which is approved to keep an updated list of the telephone numbers of subscribers **who have explicitly informed their telephone operator or this association that they do not want to be contacted** by telephone for direct marketing purposes.

All telephone operators work with this association.

The telephone numbers you want to call should not be registered on this list.

This **general right to object** is expressed by subscribers who do not wish to receive any telephone call from anyone offering products or services or any other promotional action by telephone.

You should **then check your own client lists** for the following:

- people who are not on the "[Do Not Call Me](#)" list and who you intend to contact may have told you that they **do not want to** receive this kind of call;
- people on the "Do Not Call Me" list may have informed you, **after** they have been registered on this list, that they accept this type of call. This is what is called **specific consent** expressed by the consumer.

Warning! Please note that it is essential to pay attention to the date on which the customer gave specific consent to be contacted by telephone by your company. If this date occurs later than the general opposition expressed in the "Do Not Call Me" list, then you **can** contact them. Otherwise, you cannot contact the client. If you choose to do it anyway, you may be subject to sanctions.

Concrete example:

Mr X, a client, does not want to be contacted by telephone for advertising purposes or sale of products and services, regardless of the firm contacting him. He therefore chooses to register his number on the "Do Not Call Me" list on 03.03.2016.

On 02.11.2016, he visits the website of company Y and signs up to receive marketing offers and other promotions from Y.

Result: if company Y wants to launch a promotional action after 01.12.2016, it can contact Mr X **as long as he has not informed Y since 02.11.16 that he has changed his mind**. Y can do so, since a specific consent was given **after** the general right to oppose.

Tip: Remember to make it clear to your (future) clients **that they have the right to agree or refuse** to receive advertising from you for the duration of their business relationship with you.

4. What do you advise me to do?

Have a system in place to:

- offer your clients the permanent, simple and free possibility of agreeing or refusing to receive advertising from you. For example, when a client creates an account or requests information, after an order has been placed, as part of a satisfaction survey, a contest, etc.;
- collect consent and opposition to marketing actions from all your clients;
- make sure that you have written and dated proof, as you must be able to prove that you have consulted the mandatory lists and respected the client's choice;
- **before** each marketing action, check the content of the "[Do Not Call Me](#)" list and remove any names that are both on this list and on your potential target lists;
- cross-reference your potential targets with your own lists.

Tip: Make sure that all these lists are easily available to the people in charge of marketing actions, and are always **up to date and dated**.

During an inspection, you must be able to prove that you have consulted and cross-checked the above lists. You may be subject to a penalty if the complainant is on the general anti-advertising list ([Do Not Call Me](#)) and has not subsequently expressed consent to be contacted by you, but you contacted them anyway.

5. What are the possible sanctions?

Infringements are punished by a fine of up to € 80,000 (or up to 4% of the annual turnover, whichever is higher).¹

The Economic Inspection can carry out investigations following a complaint received through the [Report](#) platform. It may also carry out investigations on its own initiative or as part of a large-scale general investigation in the sector. Investigations can also take place at the request of the minister or the public prosecutor.

When an infringement is detected, the Economic Inspection has the following options:

- issue a warning requiring that the situation be regularised;
- send its findings to the public prosecutor;
- use a transaction (proposal of a sum whose voluntary payment and cessation of the infringement terminate the proceedings);
- impose an administrative fine.²

¹ The provisions on sanctions are contained in articles XV.70 and XV.83 CEL.

Annual turnover: the total turnover of the last completed financial year preceding the imposition of the fine for which data are available to establish the annual turnover.

Level 2 sanction: a criminal fine of € 26 to € 10,000, which, together with the legal surcharges, amounts to a criminal fine of € 208 to € 80,000 (or up to 4% of the annual turnover, whichever is higher).

² The minimum and maximum amounts of the administrative fine correspond to the respective minimum and maximum amounts of the criminal fine for the same act. The legal surcharges are also applicable to these administrative fines (article XV.60/20 CEL).