



# Direct Marketing and Privacy:

**Overview of EU legislation and local specifics across Central Europe**

September 2024

# Direct Marketing

## Direct marketing is a vital element in the success of most businesses.

Companies are continually caught between the need to develop innovative marketing strategies that leverage newer and more powerful technologies, while at the same time adapting to regulatory challenges which limit how they approach customers and nurture relationships. As a result, companies have complex decisions to make about how they process personal data. Can they rely purely on grounds of legitimate interest? Or is the prior consent of the customer a prerequisite? Is consent to be given on an opt-in or opt-out basis? And when can we adopt a “soft opt-in” approach?

In this cross-jurisdictional guide, we provide a consolidated overview of how countries across the Central European region regulate matters of direct marketing and privacy, with reference to the main EU laws on data protection and cookies.

## GDPR and ePrivacy Directive

At the EU level, direct marketing is chiefly regulated by the General Data Protection Regulation (GDPR) and the ePrivacy Directive.

The GDPR provides a general framework for personal data processing, setting out basic principles, rights and obligations, including in matters of informed consent. Meanwhile, the ePrivacy Directive sets out specific rules for the electronic communications sector, regulating areas such as unsolicited emails, treatment of traffic data and cookies.

On 10 January 2017, the European Commission proposed a new ePrivacy Regulation with the aim of reinforcing trust and security in the digital world. However, it is uncertain whether the proposal will be adopted anytime in the near future. Therefore, this document explores the current landscape according to the existing ePrivacy Directive (Directive 2002/58/EC) and its implementing national laws.



## How Deloitte Legal can help

Navigating this complex data processing framework requires effective data management and an integrated approach. Deloitte Legal is your ideal compliance partner in all matters of direct marketing.

**As we break down the regulatory situation in 12 jurisdictions across Central Europe, we will provide answers to questions such as:**

- How has the ePrivacy Directive been transposed into national law?
- On which legal grounds can personal data be processed for direct marketing purposes?
- Do any exemptions apply (e.g. in the use of cookies)?
- What line has been taken by national courts and supervisory authorities?

Deloitte Legal's privacy and data protection teams offer a range of services aimed at ensuring compliance with the GDPR, the ePrivacy Directive and national legislation. At the end of the publication, you will find a list of some of the highly specialised compliance and consultancy services we offer.



**Miglena Micheva**

Senior Managing Associate  
mmicheva@deloittece.com



**Irena Koleva**

Senior Associate  
ikoleva@deloittece.com

## Local regulation (Direct marketing and cookies)

- Article 9 of Law No. 10128 of 11 May 2009 “On Electronic Commerce”, as amended (“Law on e-Commerce”) allows direct marketing communications to be sent by email or SMS only with the explicit consent of the recipient. Unsolicited commercial emails, where permitted, must be clearly identifiable as advertisements from the moment the recipient receives them. Service providers sending unsolicited commercial emails must maintain an "opt-out" list of individuals who have requested not to receive such communications. These providers are legally required to check this list regularly and to comply with it.
- Regarding the obligations of communication services providers, Article 128 of Law No. 9918 of 19 May 2008 “On Electronic Communications in the Republic of Albania”, as amended (“Law on Electronic Communications”), currently in force until December 2024, allows marketing through automated calling systems only with the subscriber's prior consent, which can be revoked at any time. In addition, paragraphs 2 and 3 of Article 128 of the Law on Electronic Communications stipulate that businesses may use email addresses obtained through customer relationships to market similar products or services. However, they must give customers the possibility to opt out of receiving such marketing emails, using a clear and simple means and free of charge, at any time. The Law on Electronic Communications prohibits the sending of direct marketing messages by SMS or email if the sender's identity is concealed or if the recipient cannot easily request to stop receiving such communications.
- Regarding cookies, the Law on Electronic Communications (Article 124) allows communication service providers to use traffic data for marketing their services or offering value-added services only if they have obtained explicit consent from their subscribers or users. Prior to granting consent, subscribers and users must be informed about the specific types of traffic data that will be processed. They also have the right to withdraw their consent at any time. Public communication network operators and service providers are required to clearly outline in their contracts the methods and duration for storing and processing traffic data. They must also explicitly state that this data will be stored in compliance with applicable laws and regulations.
- In addition, Law No. 9887 of 10 March 2008 “On Personal Data Protection” as amended, together with the framework of decisions, instructions, and guidelines issued by the Information and Data Protection Commissioner (“IDPC”), already imposes a comprehensive set of regulations for data controllers to adhere to and is generally in line with the principles enshrined in the GDPR. These obligations include requirements: for transparency and accountability, including the requirements to notify the IDPC about processing activities; to inform data subjects before processing commences; and to implement the appropriate technical and organisational measures stipulated in the data protection legislation and the decisions of the IDPC.

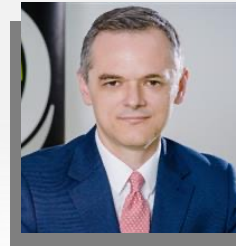
## Local regulation (Direct marketing and cookies)

- Under the applicable laws mentioned above and the decisions, guidelines and recommendations of the IDPC, the processing of personal data for direct marketing purposes requires the explicit written consent of the data subject.

## Relevant court/supervisory authority practice in direct marketing

- While there is no specific case law or established practice regarding direct marketing, the IDPC has consistently emphasised the need for data controllers to adhere to data protection laws when using personal data for marketing purposes in several investigations.

### Key Contact



**Ened Topi**

**Senior Managing Associate**

etopi@deloittece.com



# Bulgaria

## Transposition of the EU ePrivacy Directive (Directive 2002/58/EC)

- The ePrivacy Directive (Directive 2002/58/EC) has been implemented through the Electronic Communications Act ("ECA"). The transposing legislation does not differ from the Directive in terms of digital marketing. The ECA imposes consent and information requirements for marketing conducted by phone, fax and email, including by SMS, instant messaging, push notifications and other messages.
- The general rule is that most forms of digital marketing require the prior opt-in of the intended recipient.
- However, under the ePrivacy Directive and Article 261 of the ECA, a limited exemption to the strict opt-in requirement applies to marketing emails sent to individuals whose details were collected by the data controller "in the context of the sale of a product or service". This is known as a "soft opt-in" exemption and applies if all of the following conditions are met:
  - the data controller obtained the individual's electronic contact details "in the context of the sale of a product or a service";
  - the email communication sent by the data controller to the data subject is exclusively for direct marketing of "its own similar products or services"; and
  - the data controller clearly and distinctly gives the data subject the opportunity to opt out of email marketing, free of charge and in an easy way, both at the time his/her details are initially collected and in each subsequent marketing communication.
- The provisions of the ePrivacy Directive regarding cookies have been transposed through the Electronic Commerce Act ("eCommerce Act"). Article 4a para 1 of the eCommerce Act provides that information society service providers may store information or gain access to information stored in the terminal equipment of the service recipient if:
  - the recipient of the information society service has been given clear and detailed information in accordance with Article 13 of the GDPR; and
  - the recipient has not refused the storage of or access to the information ("opt-out"). This differs from the ePrivacy Directive, which requires data subjects to "opt-in", except for strictly necessary cookies).



## Legal grounds for personal data processing for direct marketing

- The position of the Commission for Personal Data Protection ("CPDP") is that consent is the primary basis for the processing of personal data for direct marketing purposes. It can be used for both existing and potential customers.
- Joint controllers can use a "single consent", provided that it complies with the requirements.

## Relevant court/supervisory authority practice in direct marketing

- Decision No. ППН-01-70 of 1 December 2022 of the Commission for Personal Data Protection ("CPDP"):
  - A complaint was filed with the CPDP against a bank for the unlawful processing of the complainant's personal data for the purposes of direct marketing after the termination of their contractual relationship.
  - The complainant was a client of the bank for less than two months in 2021. He voluntarily provided his personal data for the purposes of the contract, which included an email address provided in a customer identification questionnaire filled out by the complainant when opening the account.
  - The account was closed at the initiative of the complainant. The complainant then submitted an application for deletion of his personal data. This was disregarded by the bank, which informed the complainant that his data would "be processed for limited purposes in compliance with the legal requirements", specifying that general processing period adopted by the bank – for the storage of the personal data of its customers – was 10 years from the date of terminating the relationship with the bank. The bank's response explicitly states that "for the remaining period of time, the bank will limit the processing of personal data only for the specified purpose and on the specified legal basis".
  - However, it was established that a month after the relationship between the parties was terminated, the bank processed the complainant's personal data for the purposes of direct marketing. An offer for a consumer loan offered by the bank was sent "entirely digitally" to the complainant at the email address provided by him.
  - The message was of a direct marketing nature – it offered goods and services, in this case credit services offered by the bank, as part of a campaign targeted at the bank's customers. On the date the message was sent to the complainant, he was not a client of the bank.

- The processing of the complainant's personal data for this specified purpose was not carried out in accordance with the GDPR. The reason was the technical and organisational measures introduced by the bank – an additional control mechanism had been applied which later changed the status of customers who had closed their accounts unusually quickly after making several account transactions if the customer had been with the bank for a period of less than three months. This mechanism, in the bank's opinion, was put in place and linked to the need to subsequently monitoring customers' behaviour immediately after closing their accounts and terminating their relationship with the bank in order to assist in meeting the bank's anti-money laundering obligations. However, the functionality introduced by the bank, which changed the client's status from "active" to "inactive" for more than a month after his relationship with the bank had been terminated, led the complainant's personal data to be processed by the bank for direct marketing purposes in violation of the GDPR.
- The CPDP considered that the measures put in place by the controller were not appropriate and not capable of guaranteeing and demonstrating that the processing was carried out in accordance with the GDPR.
- After referring the case to the CPDP, the measures were reviewed and updated and steps were taken to implement a technological solution that marked the status of customers who had terminated their relationship with the bank from "active" to "inactive" immediately after closing their account with the bank, no matter how long that person was a customer of the bank.
- An official warning was issued by the CPDP. The decision was not appealed and has entered into force.

## Key Contacts



**Miglena Micheva**

**Senior Managing Associate**

[mmicheva@deloittece.com](mailto:mmicheva@deloittece.com)

## Transposition of the EU ePrivacy Directive (Directive 2002/58/EC)

- The ePrivacy Directive (Directive 2002/58/EC) has been implemented through the Croatian Electronic Communications Act ("ECA"). The transposing legislation does not differ from the Directive in terms of direct marketing. The provisions of the ECA impose consent and information requirements for marketing conducted by phone, fax and email, including SMS and MMS marketing.
- The general rule is that most forms of direct marketing require the prior opt-in consent of the intended recipient. However, exemptions apply to communications sent to legal entities and to marketing emails sent on an opt-out basis to data subjects whose details were collected by the data controller in the context of the sale of a product or service.
- The opt-out exception under the ePrivacy Directive and Article 50 of the ECA grants data controllers a limited exemption from the strict opt-in requirement when: (i) sending direct marketing emails to their customers whose details were obtained for the purpose of selling products and services, and (ii) directly promoting and selling the data controller's own similar products or services, provided that their customers are clearly and distinctly given the opportunity to object, free of charge and in a simple manner, to such use of their email addresses when they are collected and when they receive each email if the customer has not previously refused such use of data.
- The rules of the ePrivacy Directive regarding cookies are also implemented through the ECA. Article 43 para 4 allows the use of electronic communication networks to store data or to access already stored data in the terminal equipment of users only where the user has given his or her consent after having received clear and complete information about the purposes of the data processing in accordance with the relevant personal data protection regulations. This cannot prevent technical storage or access to data for the purpose of carrying out the transmission of communications over an electronic communications network or, if necessary, of providing information society services at the express request of the end user or users.



## Legal grounds for personal data processing for direct marketing

- The Croatian Personal Data Protection Agency (AZOP) stated in its opinion of 19 April 2019 that the eligible legal grounds for direct marketing are consent (in application of Article 107 para 1 of the previous Electronic Communications Act – now Article 50 para 1 of the Electronic Communications Act) and legitimate interest (in application of Article 107 para 2 of the previous Electronic Communications Act – now Article 50 para 2 of the Electronic Communications Act).

## Relevant court/supervisory authority practice in direct marketing

- In April 2024, the Croatian Personal Data Protection Agency (AZOP) imposed two administrative fines of EUR 15,000 and 20,000 for the illegal processing of personal data using cookies.
- The data controllers had used cookies to collect and process the personal data of data subjects without allowing them to give or withdraw their informed consent to the processing of personal data using cookies. This was in violation Article 6(1)(a) and, accordingly, Article 7 of the GDPR.

### Key Contact



**Zrinka Vrtaric**

**Director / Local Partner\***

[zvrtaric@kip-legal.hr](mailto:zvrtaric@kip-legal.hr)

\* Attorney-at-law at Vrtaric & Partners in cooperation with Deloitte Legal



# Hungary

## Transposition of the EU ePrivacy Directive (Directive 2002/58/EC)

- In accordance with Act XLVIII of 2008 on the Basic Conditions on and Restrictions of Commercial Advertising (“Advertising Act”), direct marketing by email is only permitted with the prior, explicit, informed and voluntary consent of the recipient (in the case of natural persons).
- Consent may be expressed in any way or form, as long as the above conditions are met. The statement of consent must contain the name of the person giving consent, whether the advertisement to which the consent pertains may be disseminated only to persons of a certain age, the place and date of birth of the person giving consent, any other personal data authorised to be processed and an indication that the consent was given freely and after having received all relevant information.
- In addition, communications sent for the purpose of requesting consent should not contain any advertising other than the name and description of the company. All communications disseminated in this way above must contain a clear and prominent statement informing the recipient of the address and other contact details to which he/she should send a statement of consent to receive such advertising or notice to unsubscribe, as appropriate.
- The laws of Hungary concerning direct marketing do not differentiate between business-to-consumer (B2C) and business-to-business (B2B) communications, as long as the recipient is a natural person. Therefore, where an address contains personal data (e.g. if the name of the contact person is included in the email address), consent for data processing is always required. When the address contains only corporate information, consent is not required.

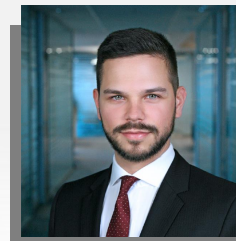
## Legal grounds for personal data processing for direct marketing

The Advertising Act allows marketing advertisements/communications to be sent directly – such as by email or equivalent individual communications – only with the prior, explicit, informed and voluntary consent of the recipient (in the case of natural persons).

## Relevant court/supervisory authority practice in direct marketing

- The National Data Protection Authority (NAIH) fined a data controller HUF 30,000,000 (approx. EUR 80,000) for failing to comply with the national-law requirement to use a legitimate basis for direct marketing, and for failing to determine the exact purpose of the data processing activity. (Case No. NAIH-2732-2/2023)
- The NAIH ruled that when providing information on marketing-related data processing activities to recipient data subjects, it is not enough to state “marketing” as the purpose of that processing, as this term refers to an activity that can be carried out in numerous ways and such a simple description of the activity could hide the actual purposes and methods of processing the personal data (outcome: fine of HUF 10,000,000, approx. EUR 26,000). (Decision No. NAIH-542-41/2014/H)
- The NAIH fined a data controller HUF 2,000,000 (approx. EUR 5,200) for failing to properly inform data subjects about the duration of the direct marketing activity and for using an insufficient legal basis for the data processing activity by failing to ask for the consent of the data subjects. Moreover, the data controller did not inform the data subject about how to unsubscribe from the emails sent to them. (Case No. NAIH-7058-5/2022)
- Also, the NAIH found that the practice of providing a checkbox that has been pre-checked or pre-filled as a tool for giving consent to e-marketing – in respect of multiple marketing-related data processing activities – is not compliant with the applicable legislation (outcome: fine of HUF 300,000, approx. EUR 775). (Decision No. NAIH-826-13/2014/H)
- The NAIH fined a data controller HUF 500,000 (approx. EUR 1,300) for failing to comply with national requirements on direct marketing for reasons including the following: (i) the data controller processed the personal data of subscribers and sent direct marketing e-mails despite the withdrawal of consent and (ii) the data controller processed more personal data than the data subject was informed about. (Case No. NAIH-373-31/2023)
- Case law is only available in Hungarian.

### Key Contact



**Daniel Nagy**

**Managing Associate**

dnagy@deloittece.com

## Transposition of the EU ePrivacy Directive (Directive 2002/58/EC)

- There are no local particularities arising from discrepancies in the transposition of the ePrivacy Directive. For the purposes of direct marketing messages/emails/telephone calls and cookies, the Law on Information Society Services applies. In general, advertising by telephone, fax, telex and email can be carried out only with the prior consent or request of the recipient, whereas direct advertising is prohibited where the recipient has expressed his/her prior explicit objection.

## Legal grounds for personal data processing for direct marketing

- The Latvian Data State Inspectorate (DSI) states that a commercial notice may only be sent to a natural person's email address or using another form of electronic communication after having obtained that person's consent (Section 9(1) of the Law on Information Society Services).

## Relevant court/supervisory authority practice in direct marketing

- Inspections: Under the Law on Information Society Services, the DSI must carry out an inspection if (i) a service recipient has received at least 10 commercial notices from a service provider within the space of a year and (ii) the service recipient has submitted a complaint about the service provider to the DSI. If, after evaluating the information received, the DSI does not find that the service recipient has received at least 10 commercial notices from a service provider in electronic form, or that the service recipient has not asked the service provider to stop sending commercial notices, the DSI will not begin the inspection.
- Fines: No notable practice.

### Key Contact



**Janis Cupans**

**Partner**

[jcupans@deloittece.com](mailto:jcupans@deloittece.com)

# Lithuania

## Transposition of the EU ePrivacy Directive (Directive 2002/58/EC)

- The ePrivacy Directive (Directive 2002/58/EC) has been transposed by the Lithuanian Law on Electronic Communications.
- The general rule in Lithuania is that advertising by telephone, fax, telex and email can be carried out only with the prior consent or request of the user, whereas direct advertising is prohibited if the user has expressed his/her prior explicit objection. The Lithuanian State Data Protection Inspectorate also has a strict formal approach to electronic direct marketing communications.
- The Law on Electronic Communications provides that the storage of information, or access to information already stored, on the terminal equipment of a subscriber or actual recipient of a public electronic communications service is permitted only if the subscriber or actual recipient of the public electronic communications service has been provided with clear and complete information – including information about the purposes of the processing in accordance with Regulation (EU) 2016/679 – and has given his/her consent.

## Legal grounds for personal data processing for direct marketing

- The position of the State Data Protection Inspectorate is that consent is the principal basis for personal data processing for direct marketing purposes.
- For more information: [Apibendrinimasdeltiesioginesrinkodarosirlojalumo20180926.pdf \(lv.lt\)](#)

## Relevant court/supervisory authority practice in direct marketing

- In 2023, the State Data Protection Inspectorate issued organisations with 127 instructions, 97 reprimands, 53 recommendations, 22 administrative offence reports for breaches of the Law on Electronic Communications, 13 fines, 12 warnings and 5 other sanctions. The total sum of the fines imposed was EUR 64,060, with a maximum fine of EUR 20,000 and a minimum of EUR 210.

### Key Contact



**Ruta Zukaite Passos**

**Managing Associate**

[rpassos@deloittece.com](mailto:rpassos@deloittece.com)



## Transposition of the EU ePrivacy Directive (Directive 2002/58/EC)

- In order to comply with Polish direct marketing regulations transposing the ePrivacy Directive, intended recipients of electronic marketing communications or telecommunication messages/emails/telephone calls must have consented to receiving them. This consent must be obtained before sending any marketing materials and it must be clear to the recipient what they are consenting to (the marketer must use clear language and the declaration of consent should be distinguishable from other communication).
- A specific feature of Polish law is that the consent provisions were simultaneously transposed by two legislative acts (the Act on Electronic Provision of Services and the Telecommunication Law). As a result, marketing firms are sometimes required to obtain at least two separate consents for the same activity due to the difference in wording between the two acts (both for sending direct commercial communications and for sending commercial communications using end devices and automatic dialing systems). This situation is about to change due to a new projected legislative Act - (Electronic Communication Law) which is currently at a final stage of legislation process and should start being in effect in August/September 2024. From this moment on the most likely interpretation is that indicating a preferred communication channel (e.g. text or email) in a single statement of consent should be enough to comply with the requirements of the new legislation.
- There is a widespread opinion in Polish jurisprudence that a request for consent represents a marketing communication in itself and, therefore, seeking consent through electronic communication or telecommunication channels would itself require prior consent.
- Cookies can be stored or accessed if the user:
  - has been informed in advance in an unambiguous, simple and understandable manner about: (i) the purposes of storing and accessing his/her data, and (ii) the possibility for the user to determine the conditions for storing or accessing data; and
  - has given consent to such information.
- Cookies must not cause changes to the configuration of the user's hardware or software.

## Legal grounds for personal data processing for direct marketing

- The Data Protection Supervisory Authority has approved direct marketing on the grounds of legitimate interests if the subject's data have been taken from publicly accessible databases such as a business register or a register of attorneys-at-law.
- Decisions by the Data Protection Supervisory Authority have also confirmed, in accordance with Recital 47 of the GDPR, that legitimate interest is a valid ground for processing when there is a relationship between the parties (such as a contractual relationship).
- The Data Protection Supervisory Authority also questioned the legitimacy of direct marketing without consent after a controller bought a private database of clients and started using it for its own direct marketing purposes.
- Alongside the Data Protection Supervisory Authority, other authorities also monitor telecommunications and electronic services consent: the Office for Electronic Communication (UKE) and the Competition and Consumer Protection Office (UOKiK). The sending of direct electronic commercial communications and the use of end devices and automatic dialing systems for direct marketing purposes requires prior consent.

## Relevant court/supervisory authority practice in direct marketing

- On 30 November 2022, the President of the Personal Data Protection Office imposed a fine of PLN 45,697 for processing the personal data of clients and potential clients without a legal basis, and in particular without obtaining their consent to processing. (Decision No. DKN.5112.5.2021)
- On 16 October 2019, the President of the Personal Data Protection Office imposed a fine of PLN 201,559.50 for processing personal data without a legal basis, as the data subjects were not customers of the controller and had requested to discontinue the processing of personal data. (Decision No. ZSPR.421.7.2019)

### Key Contact



**Grzegorz Olszewski**

**Senior Managing Associate**

[golszewski@deloittece.com](mailto:golszewski@deloittece.com)



# Romania

## Transposition of the EU ePrivacy Directive (Directive 2002/58/EC)

- Direct marketing: There are no discrepancies between the Directive and the transposing legislation. Romanian Law No. 506/2004 (regarding the processing of personal data in the context of online communications) forbids the sending of unsolicited commercial communications by automatic means without having the recipient's prior consent to receiving such communications. An exception applies if the sender of the communication has obtained the recipient's contact details at the time of making a sale, in which case the contact details may be used to advertise similar products/services without the need for the recipient's consent; nevertheless, the sender must make sure that the recipient can, easily and free of charge, oppose the use of his/her contact details for this purpose.
- Cookies: In accordance with Art. 4 para. (5) of Law No. 506/2004, the storage of information or the gaining of access to information stored in the terminal equipment of a subscriber or user is only allowed on condition that all of the following conditions are met:
  - the subscriber or user has granted his/her consent; and
  - the subscriber or user was provided with clear and comprehensive information about the purposes of the processing, among other things.
- Therefore, the subscriber or user must first give his/her informed consent before any cookies are set. The validity of that consent is assessed based on the conditions set out in the GDPR. This rule applies irrespective of whether the setting of cookies involves the processing of personal data.
- Article 4 para. (6) of Law No. 506/2004 provides two exceptions to this rule. Namely, the storage of information or the gaining of access to information stored in the terminal equipment of a subscriber or user is possible without the consent of the subscriber or user if:
  - these operations are performed for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network (the "communication exemption"); or
  - these operations are strictly necessary in order to provide an information society service explicitly requested by the subscriber or user (the "strictly necessary exemption").

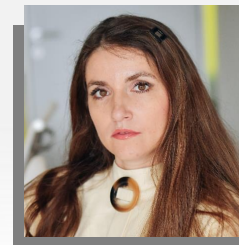
## Legal grounds for personal data processing for direct marketing

The legal basis for direct marketing is consent, in accordance with the transposition of the ePrivacy Directive into local legislation.

## Relevant court/supervisory authority practice in direct marketing

- Direct marketing: The local supervisory authority is active in prosecuting controllers who do not abide by the rules of the local law transposing the ePrivacy Directive and has imposed numerous fines over the years. In several investigations, the authority concluded that controllers had sent commercial messages (by email and/or SMS) either without having obtained the data subject's prior consent or without observing the data subject's opt-out after the data subject had opposed to receiving such messages. The fines imposed ranged between EUR 1,000 and EUR 3,000.
- Cookies: Notable fines include a EUR 40,000 fine imposed on an electricity supplier in 2023. During the investigation, the Romanian Supervisory Authority for Personal Data Protection (ANSPDCP) found that the company's website had installed non-essential cookies without the data subject's consent and, moreover, that clicking on the "Reject cookies" button did not have any effect on the cookies already installed, which remained installed and stored on the user's device for a period of time. The fine was imposed as part of an investigation which started as a result of a data breach (for which a separate fine of EUR 25,000 was imposed).
- Personal data sharing between group companies or under M&A transactions: In one recent case, the ANSPDCP fined the Romanian branch of a Polish bank for sending unsolicited messages to a data subject by both email and SMS, even though the data subject had previously requested the deletion of their data. During the investigation, the ANSPDCP found that the IT system of the controller's branch in Romania was integrated into the centralised system of the Polish-based bank. Consequently, the messages sent to customers after the date on which the contractual relationship with the bank was terminated were sent by the technical department of the bank in Poland.

### Key Contact



**Silvia-Maria Axinescu**

Senior Managing Associate

[maxinescu@reff-associates.ro](mailto:maxinescu@reff-associates.ro)

## Local regulation (Direct marketing and cookies)

- The Law on Advertising (No. 6/2016) regulates the field of direct marketing – or as the Law itself defines it, “direct advertising”.
- Under this Law, direct marketing is any marketing that is (i) conducted remotely through the delivery of letters or other addressed items to a mailbox, to a designated residential or business space, by email or by other forms of direct electronic communication; or (ii) conducted by direct contact either by handing over material containing an advertising message or by other means of personal communication (presentations, promotions, by phone, etc.).
- Cookies and cookie policy are not explicitly addressed by any specific regulation. The use of cookies would be subject to the general data protection rules.

## Legal grounds for personal data processing for direct marketing

- According to the opinion of the Commissioner and the law, the use of personal data for direct marketing purposes cannot be justified by legitimate interest, but only by the prior consent of data subjects. Consent can be withdrawn at any time, and the advertiser or message transmitter must enable this. Also, it has been established that direct advertising by telephone, fax, email or any other means of remote communication without the prior consent of the consumer is prohibited. Additionally, if personal data is processed for the purposes of direct marketing, the individual to whom the data relates must have the right to object to such processing. However, there is no notable court practice regarding this issue.



## Relevant court/supervisory authority practice in direct marketing

- Available practice is very limited as cases are not public unless published by the relevant authority. One of the published cases is as follows:
  - On 25 September 2020, the Commissioner issued a warning to a data controller (a bank) that had violated the law by failing to provide data subjects with the opportunity, through the "Consumer Credit Request" document, to specifically grant or withhold their consent to the processing of their personal data for the purpose of direct marketing, separately from the other purposes of processing stated in that document. (Case No. 072-04-1750/2020-07).
  - Fines range from approximately EUR 2,500 to EUR 16,800 per violation by legal entities that have conducted direct marketing without the prior consent of data subjects.

### Key Contact



**Igor Dencic**

**Attorney-at-Law**

idencic@deloittece.com



# Slovakia

## Transposition of the EU ePrivacy Directive (Directive 2002/58/EC)

- Slovak legislation is in majority in line with the ePrivacy Directive. Direct marketing is regulated mainly by the transposition of the Directive through the Electronic Communications Act (No. 452/2021 Coll., "ECA"). The ECA recognises direct marketing as any form of presentation of goods or services, in written or oral form, that is sent or presented through a publicly available service directly to one or more subscribers or users. For the purposes of direct marketing to subscribers or users, the use of automatic calling and communication systems without human intervention, as well as fax, email, SMS and MMS services, is only allowed after having obtained the subscriber's or user's prior verifiable consent.
- Advertising that is carried out through an automatic calling system, by fax or by email without the prior consent of the user is also prohibited by the Advertising Act (No. 147/2001 Coll.).
- Under the ECA, consent may be withdrawn at any time. Such withdrawal must be verifiably confirmed. The consent, and withdrawal, must be stored for at least four years after the withdrawal of consent.
- The ECA allows a limited exemption from the strict opt-in requirement for direct marketing (opt-out exception). The prior consent of the recipient of an email, SMS message or MMS message is not required where:
  - the data controller sends direct marketing of its own similar goods and services, provided that the data controller obtained the contact details of the recipient for the delivery of emails, SMS messages or MMS messages in connection with the sale of goods or services in accordance with ECA or a special regulation (e.g. Slovak Civil Code); or
  - the direct marketing is addressed to the publicly available contact details of a subscriber or user who is a natural person conducting business or a legal entity.
- Recipients of emails, SMS messages and MMS messages must be given the possibility to object to such use of their contact details at any time, easily and free of charge, at the time of their collection and upon delivery of each delivered message, provided that the recipient has not previously refused such use. It is prohibited to send emails that do not indicate the identity of the sender and an address to which the recipient may send a request for such messages to cease. It is also prohibited to encourage visitors to visit a website in violation of the Electronic Commerce Act.

- Elsewhere, the supervisory authority has created a “Robinson list” of phone numbers for the purpose of opting out of calls for direct marketing purposes. Any marketer who intends to conduct direct marketing calls is required to register with the authority and regularly verify the numbers in the list. A fee is charged for this verification. A specific marketing area code must be used for direct marketing calls.
- The rules on cookies under the ePrivacy Directive are also regulated through the transposing provisions of the ECA. Under the ECA, anyone who stores information or gains access to information stored in an end-user device is permitted to do so only if the user has given his/her verifiable consent. An exception applies to technical storage of data or access to stored data if the sole purpose is to carry out or facilitate the transmission of a message over a network, or if it is strictly necessary for the information society service provider to provide the information society service explicitly requested by the user.
- Further specific limitations also apply.

## Legal grounds for personal data processing for direct marketing

- In relation to direct marketing consent under the ECA, the ECA stipulates that verifiable consent means consent which meets the requirements of special regulation. The footnote to this ECA provision defines the special regulation as Article 4(11) of the GDPR (consent).
- There is no footnote in the ECA expressly linking the provisions of the GDPR to cookies. However, we can assume that the consent requirements under the GDPR also apply to consent to cookies.

## Relevant court/supervisory authority practice in direct marketing

- N/A

### Key Contact



**Pavol Szabo**

**Senior Managing Associate**

pszabo@deloittece.com



# Slovenia

## Transposition of the EU ePrivacy Directive (Directive 2002/58/EC)

- The ePrivacy Directive (Directive 2002/58/EC) has been transposed through the Electronic Communications Act ("ZEKom-2"). The transposing legislation does not differ from the Directive in terms of digital marketing. The provisions impose prior consent and information requirements for marketing by telephone (automatic dialling machines, SMS, MMS), fax and email. Generally, most types of digital marketing require the recipient's prior opt-in consent. However, an exception applies to email marketing, which can be sent on an opt-out basis to data subjects whose details were collected by the data controller during the sale of a product or service.
- The opt-out exception provided for in the ePrivacy Directive and in Article 226 of ZEKom-2 grants a conditional exemption from the mandatory opt-in requirement when conducting direct marketing by email to data subjects:
  - whose details were obtained by the data controller "in the context of the sale of a product or service",
  - the data controller sends direct marketing to those individuals only about "its own similar products or services" and
  - the data controller clearly and explicitly provided those individuals with the opportunity to opt out of receiving marketing emails, using a simple means and free of charge, at the time their data were initially collected and in each subsequent marketing communication.
- Under Article 225(1) of ZEKom-2, the communication services provider may store data or gain access to data stored on the terminal equipment of a data subject (service subscriber or user) only if the data subject has given consent ("opt-in") after being clearly and comprehensively informed about the data controller and the purposes of data processing in accordance with Articles 12–14 of the GDPR. Notwithstanding the above, article 225(2) of ZEKom-2 stipulates that consent is not required only for those cookies which are used solely for the purpose of transmitting a message over an electronic communications network or which are strictly necessary for the provision of an information society service explicitly requested by the data subject.

## Legal grounds for personal data processing for direct marketing

- Under article 226 ZEKom-2, the main basis for personal data processing for direct marketing is the consent of the data subject. However, direct marketing can be conducted without the data subject's explicit consent if there is a legitimate interest and if the specific conditions set out in points 1–3 above are met.

## Relevant court/supervisory authority practice in direct marketing

- Judgment of the Administrative Court of the Republic of Slovenia (sodba I U 694/2021-19, dated 17 January 2023) relating to direct marketing via telephone (non-automated calls). ZEKom-1 permits callers to request consent for a marketing call even after the call has been established, provided the subscriber has not already requested a prohibition of marketing calls in advance. If the data subject refuses consent (which must be allowed free of charge), the caller must immediately terminate the call and is prohibited from making further calls to the data subject.

### Key Contact



**Ana Kastelec**

**Senior Managing Associate\***

akastelec@deloittelegal.si

\* Attorney-at-law at Odvetniška pisarna Deloitte Legal Reff – podružnica v Sloveniji in cooperation with Deloitte Legal





# Ukraine

## Local regulations (Direct marketing and Cookies)

- The ePrivacy Directive and GDPR are not applicable in Ukraine since they do not form part of Ukraine's domestic legislation.
- Direct marketing is not specifically regulated by the Law of Ukraine "On Personal Data Protection". Therefore, the general principles and grounds of data protection specified in that Law apply.
- At the same time, some aspects of direct marketing are regulated by separate legislative acts, namely:
  - The Law of Ukraine "On Electronic Commerce" provides certain legal requirements for the distribution of commercial electronic messages. Commercial electronic messages are electronic messages in any form intended for the direct or indirect promotion of goods, works or services or the business reputation of a person conducting business or independent professional activity. These messages must meet certain requirements stipulated in article 10 of this Law. Commercial electronic messages can only be distributed on the basis of the intended recipient having granted consent to receive them. Additionally, this Law provides that a commercial electronic message may be sent to a person without his/her consent only if he/she can refuse ("opt-out approach") to receive such messages in the future.
  - The Law of Ukraine "On Electronic Communications" stipulates that the sending of advertising for the purpose of selling goods or services is possible only if (i) the end user has given his/her consent and (ii) the end user is given the opportunity to refuse the use of his or her data, free of charge, at any time and in a simple and understandable form. The intentional mass distribution of electronic, text and/or multimedia messages (spam) without consent is prohibited.
  - The Law of Ukraine "On Advertising" prohibits the processing of personal data of children that has been collected or otherwise obtained, where the processing is for the purposes of direct marketing or profiling, including behaviorally targeted advertising.
  - The Law of Ukraine "On Consumer Protection" states that product information may be communicated to the consumer using remote communication with the consent of the consumer, and prohibits the making of constant telephone, fax, electronic or other communications without such consent.

- As we can see, there are different regulations governing direct marketing in Ukraine. Therefore, we believe that a conservative approach would be to carry out direct marketing based on the consent of the intended recipient and offer the possibility to opt out of receiving such messages in the future.
- The Draft Law of Ukraine "On Personal Data Protection" No. 8153 seems to contain measures that will harmonise Ukrainian domestic legislation on direct marketing with EU legislations. The Draft Law provides for the processing of personal data for direct marketing purposes solely based on the explicit consent of the personal data subject to such processing, except in certain cases.

## Legal grounds for personal data processing for direct marketing

- There is no relevant court practice/interpretation by supervisory authorities regarding the validity of the legal grounds used for direct marketing (consent or legitimate interest).

## Relevant court/supervisory authority practice in direct marketing

- As of April 2024, we have not identified prosecutions of such practice in the Unified State Register of Court Decisions.
- Domestic legislation provides for different types of liability that may be applicable to marketing cases:
  - fines for failure to comply with the personal data protection procedure and for breaches of data protection legislation, ranging from approximately EUR 5 to EUR 810.
  - fines for violating advertising rules on advertising are 5 times the cost of the mailing.

### Key Contacts



**Anton Bychkov**

**Senior Managing Associate**

anbychkov@deloittece.com

# How can Deloitte Legal help your organization?

## Overview of cross jurisdictional services:

- **Drafting or reviewing** privacy documents and assisting in the implementation of data governance
- **Drafting privacy notices** and cookie policies and banners for sites/ecommerce
- **Drafting and negotiating** privacy/security clauses, Data Processing Agreements (DPA), Data Transfer Agreements (DTA), Joint Controllership Agreements (JCA) and other contracts
- **Carrying out risk assessments**, Data Protection Impact Assessments (DPIA), Legitimate Interests Assessments (LIA) and other privacy assessments, also in relation to the use of new technologies.
- **Advising on data transfers** related matters, carrying out Transfer Impact Assessments (TIA), drafting Standard Contractual Clauses (SCCs), Binding Corporate Rules (BCR) and Global Data Transfer Agreements (GDTA), supporting in the identification of adequate supplementary measures
- **Supporting in the management** of data breaches and of Subject Access Requests (SAR) and other privacy rights
- **Delivering trainings** to employees and managers
- **Defining audit plans** and carrying out relating activities
- **Supporting in multi-jurisdictional projects** and in extraordinary deals
- **Supporting in any procedure** before the competent supervisory authorities
- **Assisting in any claim or litigation** concerning personal data
- **Providing DPO services** or supporting the internal DPO.
- **Supporting cross-border data transfer** out of Ukraine



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