

G-Regs™

France - Mail and E-communications

**Full title:**

2013 - Mail and Electronic Communications Code, Article L34-5 (*Code des postes et des communications électroniques*): This Code is a cornerstone for the regulation of electronic communications; the specific article L34-5 implements the 2002 EU Directive Privacy in e-communications banning unsolicited commercial communications to fax, telephone or e-mails without a consumer's prior consent:

http://www.legifrance.gouv.fr/affichCode.do;jsessionid=4AD8C529F2AAAB8CFE6055DF3AD6FD8C.tpdjo08v_1?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20130417

Title of relevant section:

Book II: Electronic Communications
TITRE Ier: General provisions
Chapter II: Legal regime
Section 3: Protection of the privacy of users of electronic services and networks.

Article L34-5

Amended by [Ordonnance n°2011-1012 du 24 août 2011 - art. 8](#)

Direct marketing using automated calling or communication systems, fax machines or email using the contact details of a natural person, subscriber or user who has not agreed in advance to receive direct marketing communications by such means is prohibited.

Under the terms of this article, consent means any freely given, specific and informed indication of his or her wishes by which a person agrees that personal data relating to him/her may be used for direct marketing purposes.

Direct marketing comprises the sending of any message intended to promote, directly or indirectly, goods or services or the image of a person selling goods or providing services.

However, direct marketing by email is authorised if the personal details of the intended recipient have been collected from him/her, in accordance with the provisions of law No. 78-17 of 6 January 1978 concerning Information Technology, Files and Civil Liberties, on the occasion of a sale or provision of services, if the direct marketing concerns similar products or services provided by the same natural or legal person, and if the recipient is offered, in specific and unambiguous terms, the opportunity to refuse, at no cost to him/herself, other than that related to the transmission of the refusal, in a simple manner, the use of his/her personal details at the time they are collected and each time a marketing email is sent to him/her if he has not previously refused such exploitation.

In all cases, the sending of direct marketing messages using automated calling or communication systems, fax machines or email is prohibited unless accompanied by valid contact details that can be used by the recipient to send a request for such communications to be terminated, at no cost other than that related to the transmission of the request. It is also prohibited to conceal the identity of the person on whose behalf the communication is sent and to mention a subject or item unrelated to the proposed

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delivery or service.

With regard to direct marketing using the personal details of a subscriber or natural person, the *Commission nationale de l'informatique et des libertés* (National Commission for IT and Civil Liberties) ensures compliance with the provisions of this article by using the authority conferred on it by the aforementioned law No. 78-17 of 6 January 1978. To this end, it can receive, by any means, complaints concerning infringements of the provisions of this article.

Infringements of the provisions of this article are examined and recorded under the conditions set by articles [L. 450-1](#), [L. 450-2](#), [L. 450-3](#), [L. 450-4](#), [L. 450-7](#), [L. 450-8](#), [L. 470-1](#) and [L. 470-5](#) of the Commercial Code.

A Council of State decree stipulates, where appropriate, the conditions for application of the present article, particularly with regard to the different technologies used.

URL of source:

http://www.legifrance.gouv.fr/affichCode.do;jsessionid=4AD8C529F2AAAB8CFE6055DF3AD6FD8C.tpdjo08v_1?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20130417