

**G-Regs™**

Italy - Asstel – Telemarketing Code



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**Full title:** Provisions regulating the processing of data extracted from subscriber lists, for the purposes of advertising, direct selling, market research and commercial communications by telephone.

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**Preamble****Preamble**

Article 20bis of Decree Law 135/2009 converted into Law 166/2009, brought important changes to the code of practice for the use of subscriber directories for telemarketing purposes.

The legislature favoured the opt-out system - permitting telephone contact with an individual for promotional and advertising purposes until such time as that individual has expressly recorded their right to no longer receive telemarketing calls in the "registro delle opposizioni" [Public Opt-out Register]. This denotes a radical change to the previous law that, to the contrary, adopted the premise of opt-in, prohibiting telephone contact with those who have not expressly given their consent for telemarketing purposes.

By virtue of this amendment, activities related to advertising, sales, market research and marketing communications are permitted via telephone to every subscriber listed in public subscriber directories, with the exception of those subscribers who have enrolled in the aforementioned Register.

The "Public Opt-out Register" was established by Decree of the President of the Republic n. 178 dated 7 September 2010, published in the Official Gazette of November 2, 2010.

In this context, it is in the interest of the parties to this Code of Conduct to carry out activities in a transparent manner, in a framework of clear guarantees, easily applicable and understood by all parties, protecting the rights (in particular the right to privacy and the right to personal identity), fundamental freedoms and general welfare of the persons concerned, in accordance with the principle of balance of interests.

Those following the Code shall perform their activities of direct marketing, distance selling and direct selling - offering products and services through all channels of communication (including alternative and progressive channels) and facilitating access to that which is offered to all persons to whom the communication is directed - in the belief that they are:

- Expressing the right to freedom of economic initiative;
- Participating in lawful activity;
- Inspiring a socially positive outcome.

Dependant the individual business case, an organization may elect to coordinate in-house systems, or to employ the services of an external specialist firm to facilitate contact with prospective clients.

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URL of source: <http://www.asstel.it/wp-content/uploads/2011/05/Codice-di-Condotta.pdf>

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In today's dynamically evolving market environment the use of call centres has become more commonplace as a means to establish, develop and maintain a sound business relationship between an organisation and its clients.

The requirement for call centre companies to self-regulate via mechanisms for monitoring and evaluation, guarantees a quality service in accordance with the agreed terms of the Code of Conduct.

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## Article 1

### Definitions

For the purposes of these Regulations,

a. "Code" shall mean the personal data protection Code as approved by legislative decree no. 196 dated 30 June 2003, including subsequent amendments thereof;

b. "Consumer Code" refers to Legislative Decree 206/2005 and successive amendments.

c. "Subscriber" shall mean any natural or legal person, body or association that is party to a contract with the provider of publicly available telephone services for the supply of such services, or is anyhow the recipient of such services also by means of pre-paid cards, and whose number is contained in the directories mentioned in Section 129 of the Code;

d. "Operator" shall mean any natural or legal person that plans to process the data mentioned in Section 129(1) of the Code in its capacity as data controller under the terms of Section 4(1)f. of the Code for the purpose of sending advertising and/or direct selling materials, or for the performance of market surveys and/or commercial communications, by using telephones;

e. "Register" shall mean the public opt-out register referred to in Section 130(3-bis) of the Code;

f. "Subscriber directories" shall mean the directories referred to in Section 129 of the Code;

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## Article 2

### Scope

a. Regulations that govern telephone use by operators authorised to establish voice calls with recipient subscribers, unsolicited or otherwise, for the purpose of sending advertising material or direct selling, or for the fulfilment of market research or commercial communications.

b. These rules apply both to operators directly carrying out the activities described in paragraphs 1 and 2 of this article, and to third parties who make telephone contact on behalf of operators.

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## Article 3

### Regulation of Telephone Contact

1. In establishing telephone contact governed by these regulations, an operator is permitted to make contact without obtaining prior consent from the recipient of the communication, so long as the recipient Subscriber's telephone number is listed within the public subscriber directories, with the exception of those subscribers who have enrolled in the aforementioned Register.

To this end, the operators must, prior to contact by telephone and within a period not exceeding 15 days from the last consultation of the Register, verify whether it is permissible to call the phone numbers pertaining to the list of subscribers with whom it intends to contact.

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2. Even in the specific absence of enrolment by the subscriber contacted, at the time of initial telephone contact the operator must clearly indicate to the subscriber that his personal data was extracted from the subscriber directories, and also provide practical information with respect to enrolment in the Register.

3. When initiating contact with a subscriber by telephone, the operator must clearly identify themselves and the organisation they are representing, and ensure there is no variation to this information throughout the communication.

4. The provisions of this Code shall not apply to automated communication systems that do not rely on the presence of personnel for the direct management of calls to the subscriber. In this case, the contact is allowed only if the subscriber receiving the communication has given their prior consent to receive this type of communication.

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#### Article 4

##### Rules of Contact

1. Every operator that initiates telephone contact for the purpose of sending advertising material, or direct selling, or for the fulfilment of market research or commercial communications, is bound by the Register's terms and conditions as set out in Decree n.178 dated 7 September 2010.

2. Operators are obliged to provide the subscriber at the time of telephone contact - even in the absence of a specific request - information containing:

a. Unequivocal identification of the individual who is making the contact and of the organisation on behalf of which the contact takes place;

b. Clear statement of the purpose of the commercial or promotional contact;

c. A notification of the level of responsibility of the operator from where communication originates (owner or manager);

d. A notification of the subscriber directories from where the personal data was extracted;

e. Practical information with respect to possibly entry of the subscriber's telephone number into the Register, pursuant to article 7 of Presidential Decree n . 178 of dated 7 September 2010

3. Recorded entry of a subscriber's telephone number in the Register shall not preclude the use of that data for the purpose of sending advertising material or direct selling, or for the fulfilment of market research or commercial communications, providing the collection of such data was from sources other than the subscriber directories, and so long as this is done in accordance with articles. 7 paragraph 4b), 13, 23 and 24 of the Code.

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#### Article 5

##### Code of Ethics for Outbound Calls

1. Associations, business organizations and professional individuals who perform the activities described in article 2 must adopt this Code, which defines the behaviour of those who participate, and the name of the organization responsible for monitoring its implementation.

2. As indicated in article 11 of Decree n. 178 dated 7 September 2010, operators carrying out the activities provided for in article 2 shall, in an appropriate manner, inform subscribers of the existence of this Code, its contents, and their observance of the same.

3. Members must publish on their website a statement containing information useful to those who wish to enrol in the Register and the means by which a subscriber may

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exercise their right of withdrawal / change of consent, with respect to telephone contact by an organisation for promotional or commercial purposes.

4. Members are bound by the following rules:

I. Ensure that the contact is not carried out; from Monday to Friday before 9:00am or after 21:30pm; Saturday before 10:00 am or after 19:00; on Sunday or other public holidays.

II. Ensure that each number will not be included in the lists used by the operator for contact more than once per month.

III. Provide unequivocal identification of the person making the contact, name the organisation on behalf of which the contact is being made and specify the subscriber directories from which the subscriber's details were extracted.

IV. Clearly define whether the purpose of the contact is promotional, commercial or informative.

V. Adopt a pleasant and courteous manner for the duration of the contact without insisting on the continuation of the conversation when the subscriber expresses, for whatever reason, a contrary intention, and limiting repeat calls to numbers held by that subscriber for a period of time, with diligence and good faith.

VI. Use clear and understandable language, repeating information when necessary and avoiding the use of abbreviations or acronyms.

VII. Disclose fully to each contact all the features of the product / service offered.

VIII. Provide clear information about a possible recording of the conversation for contractual purposes and to obtain the consent of the Subscriber to such a recording.

IX. Provide clear information on how to exercise rights under art. 7 of the Code.

X. Provide the recipient of the call, upon initiating contact, clear information on how the account holder may enrol their telephone number in the Register.

XI. Respect the principles of good faith and loyalty, as well as positive disciplines in commercial transactions, assessed for each call to gauge any protection needed, particularly towards vulnerable consumer categories.

5. Apply in every case the provisions contained in articles 27a and 27b of the Consumer Code.

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