

# Update

## Privacy



### **Forthcoming new rules on unsolicited E-mail/SMS and Telemarketing**

31 January 2008

*This newsletter is sent from our Amsterdam office*

Pursuant to a legislative proposal presently before the upper house of the Dutch parliament (*Eerste Kamer*), a number of amendments are likely to be made to the Dutch Telecommunications Act (*Telecommunicatiewet*) under which, among other things, new rules on telemarketing and the sending of unsolicited electronic communications will be introduced.

#### **Unsolicited electronic communications**

In the future, if you wish to send unsolicited commercial information by e.g. e-mail to a business, prior consent is required pursuant to the legislative proposal, unless a statutory exception applies.

#### Summary of current rules

At present, unsolicited e-mails (or SMS messages, faxes) containing e.g. commercial information can only be sent to subscribers being natural persons if the sender can prove the recipient consented to this. An exception applies if the electronic contact data were acquired in the context of the *sale* of a product or service. In such a case, information about a company's own similar products or services may be sent, provided that:

1. at the time that the contact data were acquired, the customer was clearly and expressly offered the opportunity to object easily and free of charge; and
2. a similar opportunity to object is offered in each communication sent.

The latter requirement is also laid down in the Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens*). Unfortunately, the defined exception "in the context of the sale" has not been further extended in the legislative proposal.

#### Summary of future rules

Pursuant to the legislative proposal, unsolicited commercial information may not be sent by e.g. e-mail to a legal entity or to a natural person acting in the exercise of a profession or business without the subscriber's prior consent, unless:

- the sender makes use of electronic contact data that have been provided by the subscriber for this purpose, and are used in accordance with the purposes designated therefor by the subscriber; or
- the subscriber is established in a country outside the European Economic Area and the applicable rules for that country are complied with.

Pursuant to this amendment, commercial information may no longer be sent to businesses just like that. The aforementioned exception in the context of the sale of similar products or services for subscribers being natural persons is expanded to subscribers being legal entities. It should be noted, that the Dutch self-regulatory Code on E-mail to Commercial Recipients (*Code E-mail Zakelijke Ontvangers*), which entered into effect on 1 October 2007, already contains rules on the sending of commercial information by e-mail to business recipients (in addition to the Dutch

self-regulatory Code on the Distribution of Advertising Material by E-mail (*Code Verspreiding Reclame via E-mail*) which contains rules on the sending of commercial information to consumers).

For more information:

[\[Click here for the initial legislative proposal \(non-official translation\)\]](#)

[\[Click here for the legislative proposal in which the amendments of the lower house of the Dutch parliament are incorporated \(non-official translation\)\]](#)

## **Telemarketing**

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If you wish to perform telemarketing activities more rules will have to be complied with. For one, a statutory "do not call" register shall be set up containing the contact details of people who do not wish to be called. Furthermore, during a telemarketing phone call, you will not only be required to inform the party called of the right to object to the receipt of future telemarketing calls, but also - pursuant to an amendment of the lower house of the Dutch parliament (*Tweede Kamer*) - to offer the possibility of immediate registration in such register.

### Summary of current rules

Telemarketing for the making of unsolicited commercial communications is allowed, unless the subscriber has made it known that he does not wish to receive such communications and provided the subscriber is offered the opportunity, at the time of each communication, to object to the receipt of such communications in future.

### Summary of future rules

- A statutory "do not call" register will be set up, which must be consulted before contact is made (this is the general rule);  
Pursuant to an amendment of the lower house of the Dutch parliament, the phrase that the prohibition was addressed to "a company established in the Netherlands" has been deleted, because an exceptional situation for foreign businesses would have negative consequences for the Dutch climate for establishing a business. The State Secretary for Economic Affairs has pointed out that it remains to be seen whether such an amendment is legitimate (leaving aside the question whether it would be enforceable);
- The register will be maintained by a registrar appointed by the Minister. On request, the registrar will block, or remove from contact databases provided to him, the contact data of subscribers who do not wish to receive unsolicited communications. In addition, businesses wishing to make such unsolicited communications will be able to obtain from the registrar information on parties who do not wish to be contacted, in order to ensure compliance with the latter's wishes;
- Communications may, however, be made insofar as the contact data have been acquired in connection with the sale of a product or service or in connection with gifts/donations to an idealistic or charitable organisation and the contact data are used for communications with respect to a company's similar products or services or gifts/donations to the idealistic or charitable organisation;
- At the time of each communication, the communicating party must inform the subscriber about the register and offer him the opportunity of immediate registration therein.

For more information:

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