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CONSOM 243
JAI 1162
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CYBER 270
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NOTE

From: Presidency

To: Delegations

No. Cion doc.: 5358/17

Subject: Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (26.11.2021)

1. **DELETED**

2. The following rows are added to the four column document in the Annex of doc. 13518/21 INIT to facilitate the discussions on directories, direct marketing and the user/end-user definitions.

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
concerning the respect for private life and the protection of personal data in electronic communications
and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications) (Text with
EEA relevance)
2017/0003(COD)
Non-versioned [LATEST TEXT]
06-11-2021 at 10h02**

	Commission Proposal	EP Mandate	st6087/21 Council Mandate	Draft Agreement
Recital 27				
38	(27) As regards calling line identification, it is necessary to protect the right of the calling party to withhold the presentation of the identification of the line from which the call is being made and the right of the called party to reject calls from unidentified lines. Certain end-users, in particular help lines, and similar organisations, have an interest in guaranteeing the anonymity of their callers. As regards connected line identification, it is necessary to protect the right and the legitimate interest of the called party to withhold the presentation of the identification of the line to which the calling party is actually	(27) As regards calling line identification, it is necessary to protect the right of the calling party to withhold the presentation of the identification of the line from which the call is being made and the right of the called party to reject calls from unidentified lines. Certain end-users, in particular help lines, and similar organisations, have an interest in guaranteeing the anonymity of their callers. As regards connected line identification, it is necessary to protect the right and the legitimate interest of the called party to withhold the presentation of the identification of the line to which the calling party is actually	(27) As regards calling line identification, it is necessary to protect the right of the calling party to withhold the presentation of the identification of the line from which the call is being made and the right of the called party to reject calls from unidentified lines. Certain end-users, in particular help lines, and similar organisations, have an interest in guaranteeing the anonymity of their callers. As regards connected line identification, it is necessary to protect the right and the legitimate interest of the called party to withhold the presentation of the identification of the line to which the calling party is actually	DELETED

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	connected.	connected.	connected.	
Recital 28				
39	(28) There is justification for overriding the elimination of calling line identification presentation in specific cases. End-users' rights to privacy with regard to calling line identification should be restricted where this is necessary to trace nuisance calls and with regard to calling line identification and location data where this is necessary to allow emergency services, such as eCall, to carry out their tasks as effectively as possible.	(28) There is justification for overriding the elimination of calling line identification presentation in specific cases. End-users' rights to privacy with regard to calling line identification should be restricted where this is necessary to trace nuisance calls and with regard to calling line identification and location data where this is necessary to allow emergency services, such as eCall, to carry out their tasks as effectively as possible.	(28) There is justification for overriding the elimination of calling line identification presentation in specific cases. End-users' rights to privacy with regard to calling line identification should be restricted where this is necessary to trace malicious or nuisance calls and with regard to calling line identification and location data where this is necessary to allow emergency services, such as eCall, to carry out their tasks as effectively as possible. Location information established by the terminal equipment, using its built-in Global Navigation Satellite Systems (GNSS) capabilities or other types of terminal equipment based location data, such as location data derived from the WiFi functionality, may supplement the location data supplied by providers of	DELETED

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			<p>number-based interpersonal communications services when a call is made to emergency services. The temporary denial or absence of consent of an end-user to access location data provided by the terminal equipment GNSS, for example, because location settings are turned off, shall not prevent the transfer of such information to emergency services for the purposes of facilitating access to such services. Directive 2014/53/EU empowers the Commission to adopt delegated acts requiring that specific categories or classes of radio equipment support certain features ensuring access to emergency services.</p>	
Recital 29				
40	(29) Technology exists that enables providers of electronic communications services to limit the reception of unwanted calls by end-users in different ways, including blocking silent calls and other fraudulent and nuisance calls.	(29) Technology exists that enables providers of electronic communications services to limit the reception of unwanted calls by end-users in different ways, including blocking silent calls and other fraudulent and nuisance calls.	(29) Technology exists that enables providers of electronic communications services to limit the reception of unwanted, malicious or nuisance calls by end-users in different ways, including blocking silent calls and	DELETED

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	<p>Providers of publicly available number-based interpersonal communications services should deploy this technology and protect end-users against nuisance calls and free of charge. Providers should ensure that end-users are aware of the existence of such functionalities, for instance, by publicising the fact on their webpage.</p>	<p>Providers of publicly available number-based interpersonal communications services should deploy this technology and protect end-users against nuisance calls and free of charge. Providers should ensure that end-users are aware of the existence of such functionalities, for instance, by publicising the fact on their webpage.</p>	<p>other fraudulent unwanted, malicious and nuisance calls, such as calls originating from invalid numbers, i.e. numbers that do not exist in the numbering plan, valid numbers that are not allocated to a provider of a number-based interpersonal communications service, and valid numbers that are allocated but not assigned to an end-user. Providers of publicly available number-based interpersonal communications services should deploy this technology and protect end-users against nuisance such calls and free of charge. Providers should ensure that end-users are aware of the existence of such functionalities, for instance, by publicising the fact on their webpage.</p>	

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Recital 30				
41	(30) Publicly available directories of end-users of electronic communications services are widely distributed. Publicly available directories means any directory or service containing end-users information such as phone numbers (including mobile phone numbers), email address contact details and includes inquiry services. The right to privacy and to protection of the personal data of a natural person requires that end-users that are natural persons are asked for consent before their personal data are included in a directory. The legitimate interest of legal entities requires that end-users that are legal entities have the	(30) Publicly available directories of end-users of electronic communications services are widely distributed. Publicly available directories means any directory or service containing end-users information such as phone numbers (including mobile phone numbers), email address contact details and includes inquiry services. The right to privacy and to protection of the personal data of a natural person requires that end-users that are natural persons users are asked for consent before their personal data are included in a directory. The legitimate interest of legal entities requires that end-users that are legal entities have the	(30) Publicly available directories of end-users of electronic communications services are widely distributed. Publicly available directories means any directory or service containing information on end-users information of number-based interpersonal communication services such as name , phone numbers (including mobile phone numbers), email address, home address contact details and includes inquiry services. The right to privacy and to protection of the personal data of a natural person requires that, the main function of which is to enable to identify such end-users. End-users that are	

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	right to object to the data related to them being included in a directory.	right to object to the data related to them being included in a directory. <i>The consent should be collected by the electronic communications service provider at the moment of signing the contract for such service. Natural persons acting in a professional capacity, such as independent professionals, operators of small businesses or freelancers, shall be equated with legal persons, as regards their data related to their professional capacity.</i> AM 30	natural persons are should be asked for consent before their personal data are included in a directory, unless Member States provide that such end-users have the right to object to inclusion of their personal data. The legitimate interest of legal entities persons requires that end-users that are legal entities persons have the right to object to the data related to them being included in a directory. End-users who are natural persons acting in a professional capacity should be treated as legal persons for the purpose of the provisions on publicly available directories.	
Recital 31				
42	(31) If end-users that are natural persons give their consent to their data being included in such directories, they should be able to determine on a consent basis which categories of personal data are included in the directory (for example name, email address, home address, user name, phone number). In addition, providers of	(31) If end-users that are natural persons If users give their consent to their data being included in such directories, they should be able to determine on a consent basis which categories of personal data are included in the directory (for example name, email address, home address, user name, phone number). In addition, providers of	(31) If end-users that are natural persons give their consent to their data being included in such directories, they should be able to determine on a consent basis which categories of personal data are included in the directory (for example name, email address, home address, user name, phone number). In addition, Providers of	

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	<p>publicly available directories should inform the end-users of the purposes of the directory and of the search functions of the directory before including them in that directory. End-users should be able to determine by consent on the basis of which categories of personal data their contact details can be searched. The categories of personal data included in the directory and the categories of personal data on the basis of which the end-user's contact details can be searched should not necessarily be the same.</p>	<p>publicly available directorieselectronic communications service providers should inform the end-usersusers of the purposes of the directory and of the search functions of the directory before including them in that directory. End-usersUsers should be able to determine by consent on the basis of which categories of personal data their contact details can be searched. The categories of personal data included in the directory and the categories of personal data on the basis of which the end-useruser's contact details can be searched should not necessarily be the same. The providers or publicly available directories shall provide information about the search functions, as well as if new options and functions of the directories are available in the publicly available directories and provide the users the option to disable such functions.</p> <p>AM 31</p>	<p>publicly available directoriesnumber-based interpersonal communications services should inform the end-users of the purposes of the directory andwho are natural persons of the search functions of the directory before including them in that directory. End users should be able to determine by consent on the basis of which categories ofand obtain their consent before enabling such search functions related to their personal data their contact details can be searched. The categories of personal data included in the directory and the categories of personal data on the basis of which the end-user's contact details can be searched should not necessarily be the same.</p>	
Recital 32				

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43	<p>(32) In this Regulation, direct marketing refers to any form of advertising by which a natural or legal person sends direct marketing communications directly to one or more identified or identifiable end-users using electronic communications services. In addition to the offering of products and services for commercial purposes, this should also include messages sent by political parties that contact natural persons via electronic communications services in order to promote their parties. The same should apply to messages sent by other non-profit organisations to support the purposes of the organisation.</p>	<p>(32) In this Regulation, direct marketing refers to any form of advertising by which a natural or legal person sends direct marketing communications directly to one or more identified or identifiable end-users using electronic communications services, regardless of the form it takes. In addition to the offering of products and services for commercial purposes, this should also include messages sent by political parties that contact natural persons via electronic communications services in order to promote their parties. The same should apply to messages sent by other non-profit organisations to support the purposes of the organisation.</p> <p>AM 32</p>	<p>(32) In this Regulation, direct marketing communications refers to any form of advertising by which sent by a natural or legal person sends directly to one or more specific end-users using publicly available electronic communications services.</p> <p>The provisions on direct marketing communications should not apply to other form of marketing or advertising that is not sent directly to one or more identified or identifiable end-users using electronic communications services any specific end-user for reception by that end-user at addresses, number or other contact details, e.g. the display of advertising on a visited website or within an information society service requested by that end-user. In addition to direct communications advertising for the offering of products and services for commercial purposes, this should also Member States may decide that direct marketing communications may include messages direct marketing communications sent by political</p>	DELETED

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			parties that contact natural persons via publicly available electronic communications services in order to promote their parties. The same should apply applies to messages sent by other non-profit organisations to support the purposes of the organisation.	
Recital 33				
44	(33) Safeguards should be provided to protect end-users against unsolicited communications for direct marketing purposes, which intrude into the private life of end-users. The degree of privacy intrusion and nuisance is considered relatively similar independently of the wide range of technologies and channels used to conduct these electronic communications, whether using automated calling and communication systems, instant messaging applications, emails, SMS, MMS, Bluetooth, etc. It is therefore justified to require that consent of the end-user is obtained before commercial	(33) Safeguards should be provided to protect end-users against unsolicited communications for direct marketing purposes , which intrude into the private life of end-users. The degree of privacy intrusion and nuisance is considered relatively similar independently of the wide range of technologies and channels used to conduct these electronic communications, whether using automated calling and communication communications systems, semi-automated systems, instant messaging applications, emails faxes, e-mails , SMS, MMS, Bluetooth, etc. It is therefore	(33) Safeguards should be provided to protect end-users against unsolicited communications for direct marketing purposes communications , which intrude into the private life privacy of end-users. The degree of privacy intrusion and nuisance is considered relatively similar independently of the wide range of technologies and channels used to conduct these electronic communications, whether using automated calling and communication systems, instant messaging applications, emails, SMS, MMS, Bluetooth, etc. It is therefore justified to require that	

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	<p>electronic communications for direct marketing purposes are sent to end-users in order to effectively protect individuals against the intrusion into their private life as well as the legitimate interest of legal persons. Legal certainty and the need to ensure that the rules protecting against unsolicited electronic communications remain future-proof justify the need to define a single set of rules that do not vary according to the technology used to convey these unsolicited communications, while at the same time guaranteeing an equivalent level of protection for all citizens throughout the Union. However, it is reasonable to allow the use of e-mail contact details within the context of an existing customer relationship for the offering of similar products or services. Such possibility should only apply to the same company that has obtained the electronic contact details in accordance with Regulation (EU) 2016/679.</p>	<p>justified to require that consent of the end-user is obtained before commercial electronic communications for direct marketing purposes are sent to end-users in order to effectively protect individuals against the intrusion into their private life as well as the legitimate interest of legal persons. Legal certainty and the need to ensure that the rules protecting against unsolicited electronic communications remain future-proof and justify the need to define a single set of rules that do not vary according to the technology used to convey these unsolicited communications, while at the same time guaranteeing an equivalent high level of protection for all citizensend-users throughout the Union. However, it is reasonable to allow the use of e-mail contact details within the context of an existing customer relationship for the offering of similarother products or services. Such possibility should only apply to the same company that has obtained the electronic contact details in accordance with Regulation (EU) 2016/679.</p>	<p>consent of the end-user is obtained before commercial electronic communications forend-users who are natural persons is obtained before direct marketing purposescommunications are sent to end-usersthem in order to effectively protect individualsthem against the intrusion into their private life as well as the legitimate interest of legal persons. Legal certainty and the need to ensure that the rules protecting against unsolicited electronicdirect marketing communications remain future-proof justify the need to define in principle a single set of rules that do not vary according to the technology used to convey these unsoliciteddirect marketing communications, while at the same time guaranteeing an equivalent level of protection for all citizens throughout the Union. However, it is reasonable to allow the use of e-mail-contact details for electronic message within the context of an existing customer relationship for the offering of similar products or services. Such possibility should only apply to the same company that has obtained</p>	

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		AM 33	the electronic contact details for electronic message in accordance with Regulation (EU) 2016/679.	
Recital 34				
45	(34) When end-users have provided their consent to receiving unsolicited communications for direct marketing purposes, they should still be able to withdraw their consent at any time in an easy manner. To facilitate effective enforcement of Union rules on unsolicited messages for direct marketing, it is necessary to prohibit the masking of the identity and the use of false identities, false return addresses or numbers while sending unsolicited commercial communications for direct marketing purposes. Unsolicited marketing communications should therefore be clearly recognizable as such and should indicate the identity of the legal or the natural person transmitting the communication or on behalf of whom the communication is transmitted and provide the necessary information for	(34) When end-users have provided their consent to receiving unsolicited communications for direct marketing purposes, they should still be able to withdraw their consent at any time in an easy manner. To facilitate effective enforcement of Union rules on unsolicited messages for direct marketing, it is necessary to prohibit the masking of the identity and the use of false identities, false return addresses or numbers while sending unsolicited commercial communications for direct marketing purposes. Unsolicited marketing communications should therefore be clearly recognizable as such and should indicate the identity of the legal or the natural person transmitting the communication or on behalf of whom the communication is transmitted and provide the necessary information for	(34) When end-users who are natural persons have provided their consent to receiving unsolicited communications for direct marketing purposes communications , they should still be able to withdraw their consent at any time in an easy manner and without any cost to them . To facilitate effective enforcement of Union rules on unsolicited messages for direct marketing communications , it is necessary to prohibit the masking of the identity and the use of false identities, false return addresses or numbers while sending unsolicited commercial communications for direct marketing purposes . Unsolicited communications . Direct marketing communications should therefore be clearly recognizable as such and should indicate the identity of the legal or the natural person	

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	recipients to exercise their right to oppose to receiving further written and/or oral marketing messages.	recipients to exercise their right to oppose to receiving further written and/or oral marketing messages.	transmitting sending the communication or on and, where applicable, on whose behalf of whom the communication is transmitted sent and provide the necessary information for recipients send users who are natural persons to exercise their right to oppose withdraw their consent to receiving further written and/or oral marketing messages direct marketing communications, such as valid contact details (e.g. link, e-mail address) which can be easily used by end-users who are natural persons to withdraw their consent free of charge.	
Recital 35				
46	(35) In order to allow easy withdrawal of consent, legal or natural persons conducting direct marketing communications by email should present a link, or a valid electronic mail address, which can be easily used by end-users to withdraw their consent. Legal or natural persons conducting direct marketing	(35) In order to allow easy withdrawal of consent, legal or natural persons conducting direct marketing communications by email should present a link, or a valid electronic mail address, which can be easily used by end-users to withdraw their consent. Legal or natural persons conducting direct marketing	(35) In order to allow easy withdrawal of consent, Legal or natural persons conducting direct marketing communications through voice-to-voice calls and through calls by automating calling and communication systems should present their identity line only by email should present a link, or a valid electronic	

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	communications through voice-to-voice calls and through calls by automating calling and communication systems should display their identity line on which the company can be called or present a specific code identifying the fact that the call is a marketing call.	communications through voice-to-voice calls and through calls by automating calling and communication systems should display their identity line on which the company can be called or present a specific code identifying the fact that the call is a marketing call.	mail address, which the company can be easily used by end-users to withdraw their consent. Legal or natural persons conducting direct marketing communications through voice-to-voice calls and through calls by automating calling and communication systems should display their identity line on which the company can be called or present called. Member States are encouraged to introduce by means of national law a specific code or prefix identifying the fact that the call is a direct marketing call to improve the tools provided for the end-users in order to protect their privacy in more efficient manner. Using a specific code identifying the fact that the call is a or prefix should not relieve the legal or natural persons sending direct marketing call from the obligation to present their calling line identification.	
Recital 36				
47	(36) Voice-to-voice direct marketing calls that do not involve	(36) Voice-to-voice direct marketing calls that do not involve	(36) Voice-to-voice direct marketing calls that do not involve	

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	the use of automated calling and communication systems, given that they are more costly for the sender and impose no financial costs on end-users. Member States should therefore be able to establish and or maintain national systems only allowing such calls to end-users who have not objected.	the use of automated calling and communication communications systems, given that they are more costly for the sender and impose no financial costs on end-users- Member States should therefore be able, justify the obligation for Member States to establish and or maintain national systems only allowing such calls to end-users who have not objected. AM 34	the use of automated calling and communication systems, given that they are more costly for the sender and impose no financial costs on end-users. Member States should therefore be able to establish and or maintain national systems only allowing such which allow all or certain types of voice-to-voice calls to end-users who are natural persons and who have not objected, including in the context of an existing customer relationship. Mandate 33a	
Recital 37				
48	(37) Service providers who offer electronic communications services should inform end- users of measures they can take to protect the security of their communications for instance by using specific types of software or encryption technologies. The requirement to inform end-users of particular security risks does not discharge a service provider from the obligation to take, at its own costs, appropriate and immediate	(37) Service providers who offer electronic communications services should inform end-process electronic communications data in such a way as to prevent unauthorised processing, including access, or alteration. They should ensure that such unauthorised access or alteration can be detected, and also ensure that electronic communications data are protected by using state-of the art software and	Deleted	

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	<p>measures to remedy any new, unforeseen security risks and restore the normal security level of the service. The provision of information about security risks to the subscriber should be free of charge. Security is appraised in the light of Article 32 of Regulation (EU) 2016/679.</p>	<p><i>cryptographic methods including encryption technologies. Service providers should also inform</i> users of measures they can take to protect the security of their communications for instance by using specific types of software or encryption technologies. The requirement to inform end-users of particular security risks does not discharge a service provider from the obligation to take, at its own costs, appropriate and immediate measures to remedy any new, unforeseen security risks and restore the normal security level of the service. The provision of information about security risks to the subscriber should be free of charge. Security is appraised in the light of Article 32 of Regulation (EU) 2016/679. <i>The obligations of Article 40 of the [European Electronic Communications Code] should apply to all services within the scope of this Regulation as regards the security of networks and services and related security obligations thereto.</i></p> <p>AM 35</p>		

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Article 4(3), point (-ae)				
87f		<p><i>(-ae) 'end-user' means a legal entity or a natural person using or requesting a publicly available electronic communications service;</i></p> <p>AM 59</p>		
Article 4(3), point (-af)				
87g		<p><i>(-af) 'user' means any natural person using a publicly available electronic communications service, for private or business purposes, without necessarily having subscribed to this service;</i></p> <p>AM 60</p>		
Article 4(3), point (d)				
91	(d) 'publicly available directory' means a directory of end-users of electronic communications services, whether in printed or electronic form, which is published or made available to the public or to a section of the public, including by means of a directory enquiry	(d) 'publicly available directory' means a directory of end-users of electronic communications services, whether in printed or electronic form, which is published or made available to the public or to a section of the public, including by means of a directory enquiry	(d) 'publicly available directory' means a directory of end-users of electronic number-based interpersonal communications services, whether in printed or electronic form, which is published or made available to the public or to a section of the public, including	DELETED

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	service;	service;	by means of a directory enquiry service and the main function of which is to enable identification of such end-users;	DELETED
Article 4(3), point (e)				
92	(e) ‘electronic mail’ means any electronic message containing information such as text, voice, video, sound or image sent over an electronic communications network which can be stored in the network or in related computing facilities, or in the terminal equipment of its recipient;	(e) ‘electronic mail’ means any electronic message containing information such as text, voice, video, sound or image sent over an electronic communications network which can be stored in the network or in related computing facilities, or in the terminal equipment of its recipient;	(e) ‘electronic mail message’ means any electronic message containing information such as text, voice, video, sound or image sent over an electronic communications network which can be stored in the network or in related computing facilities, or in the terminal equipment of its recipient, including e-mail, SMS, MMS and functionally equivalent applications and techniques;	DELETED

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Article 4(3), point (f)				
93	(f) ‘direct marketing communications’ means any form of advertising, whether written or oral, sent to one or more identified or identifiable end-users of electronic communications services, including the use of automated calling and communication systems with or without human interaction, electronic mail, SMS, etc.;	(f) ‘direct marketing communications’ means any form of advertising, whether <i>in written, oral or video format, sent, served or presented</i> or oral, sent to one or more identified or identifiable end-users of electronic communications services, including the use of automated calling and communication communications systems with or without human interaction, electronic mail, SMS, <i>fax machines</i> etc.;	(f) ‘direct marketing communications’ means any form of advertising, whether written or oral, sent via a publicly available electronic communications service directly to one or more identified or identifiable end-users of electronic communications services, including specific end-users, including the placing of voice-to-voice calls , the use of automated calling and communication systems with or without human interaction, electronic mail, SMS, message etc.;	DELETED
Article 4(3), point (g)				
94	(g) ‘direct marketing voice-to-voice calls’ means live calls, which do not entail the use of automated calling systems and communication systems;	(g) ‘direct marketing voice-to-voice calls-’ means live calls, which do not entail the use of automated calling systems and eommunication communications systems, <i>including calls made</i>	(g) ‘direct marketing voice-to-voice calls’ means live calls, which do not entail the use of automated calling systems and communication systems;	

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		<p><i>using automated calling and communications systems which connect the called person to an individual;</i></p> <p>AM 64</p>		
Article 4(3), point (h)				
95	<p>(h) ‘automated calling and communication systems’ means systems capable of automatically initiating calls to one or more recipients in accordance with instructions set for that system, and transmitting sounds which are not live speech, including calls made using automated calling and communication systems which connect the called person to an individual.</p>	<p>(h) ‘automated calling and communicationcommunications systems’ means systems capable of automatically initiating calls to one or more recipients in accordance with instructions set for that system, and transmitting sounds which are not live speech, including calls made using automated calling and communication systems which connect the called person to an individual.</p> <p>AM 65</p>	<p>(h) ‘automated calling and communication systems’ means systems capable of automatically initiating calls to one or more recipients in accordance with instructions set for that system, and transmitting sounds which are not live speech, including calls made using automated calling and communication systems which connect the called person to an individual-;</p>	
Article 4(3), point (i)				
95a			<p>(i) ‘direct marketing calls’ means direct marketing voice-to-voice calls and calls made via automated calling and</p>	

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			communication systems for the purpose of direct marketing.	