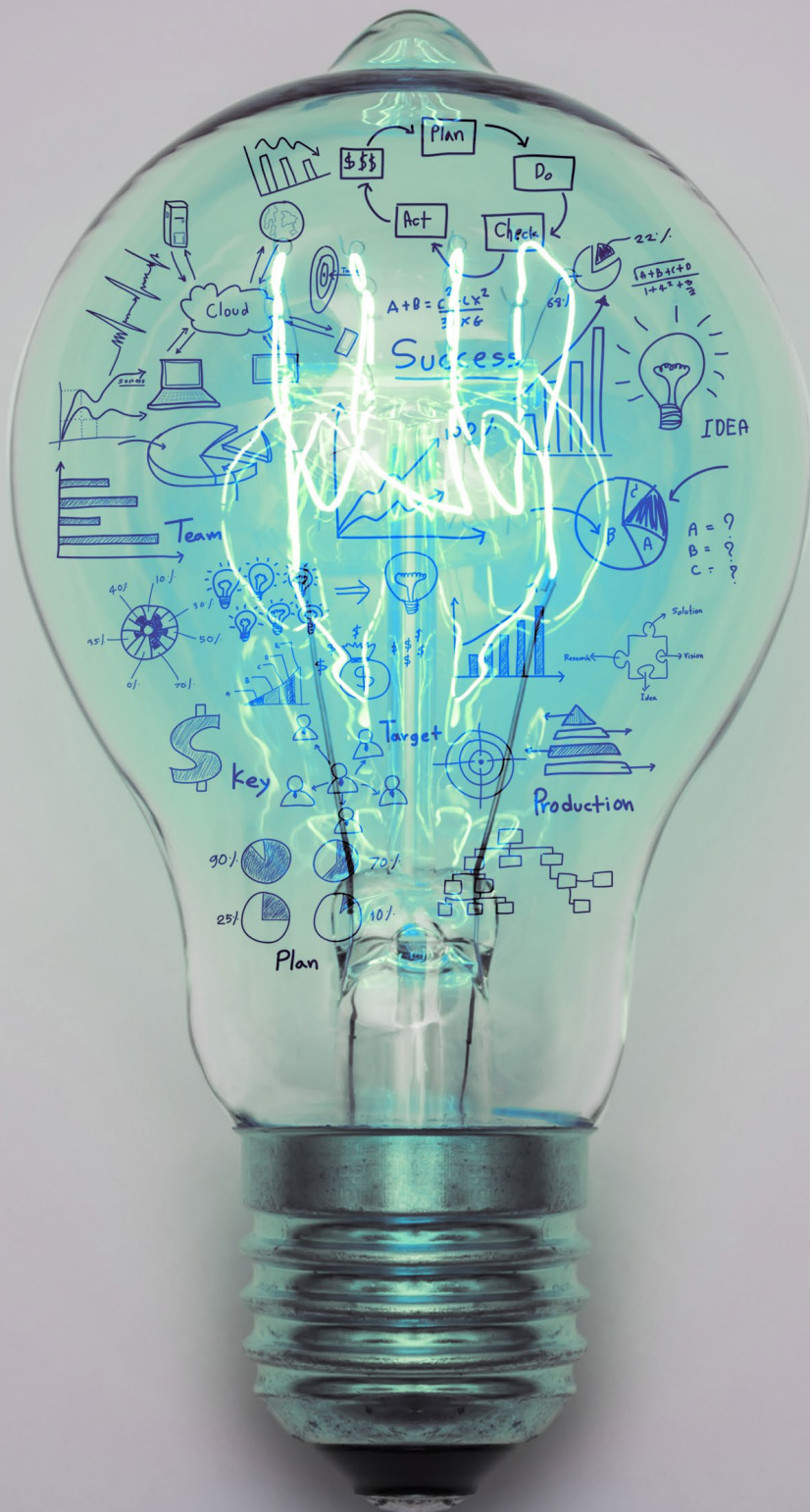




Celsius
International

B2B EMAIL MARKETING EUROPEAN LEGISLATION WHITE PAPER





BACKGROUND

The European Union might be a united area (Brexit allowing) when it comes to political and economic ideals, but as for sending B2B emails within the territory, there are still seemingly endless rules and considerations.

Marketing automation is now widely accepted as the optimal way for organizations to effectively market and automate repetitive tasks on multiple online channels (email, social media, websites, etc.) and possibilities in this area seem to evolve continuously. There is however one thing that will not change: the most needed revision of EU's current data protection laws, coming into force no later than by end of 2018. This has rendered email marketing for all responsible companies a minefield.

As a result, there is no more time for indecisiveness. Businesses need to understand the regulations, the changes and the impact now as they will be asked to comply with the upcoming legal framework.

This guide is aimed at helping you better understand the current and unique window of opportunity with regards to email opt-in legislation. New approaches to customer privacy will soon force marketers to work harder to obtain consent for using someone's data. Still, a fresh look at the new opportunities around programmatic advertising ([Account Based Advertising](#) and Live Audiences) show that there is a new door opening towards engaging with your key prospects and to positively affect the customer experience without needing email opt-in or even email addresses at all. Not a bad thing. It is not only a more scalable and less intrusive way to communicate than the one-to-one emails but almost certainly more favorable than risking a non-compliance fine that can run into the millions of Euros.

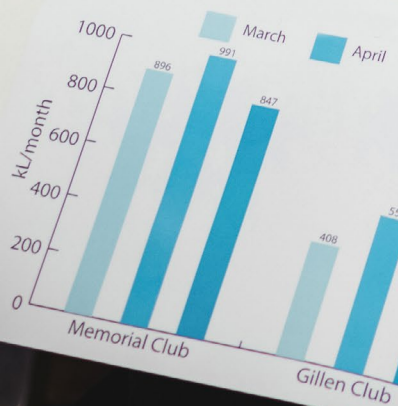
WHAT'S THE CURRENT STATUS?

The new General Data Protection Regulation (GDPR) will soon come into force but it will not be the only regulation affecting data-driven communications to individuals in the EU. With regards to email marketing communications, a new ePrivacy Directive is under consultation. It will replace the current Directive from 2003 and set additional requirements for organisations.

However, until changes come into place, the sending of electronic communications is still regulated in Europe by Article 13 of the 2003 European Directive on Privacy and Electronic Communications. For email marketing specifically, the “country of reception” principle applies – this means that the law of the country of the recipient of an email applies, even when the sender is situated abroad. Since at national level laws on data protection vary widely, this makes planning and executing cross-border email campaigns covering a number of European countries very complex.

Another challenge faces B2B marketers specifically - laws on B2B email marketing are often vague, with many grey areas where it's difficult to find clear direction. Some countries have now specifically stated that (the often stricter) B2C regulations apply to B2B email marketing.

In addition, some countries will have rules about message content, others consider whether an opt-in is necessary on the basis of the volume of the campaign and some also require an opt-in for “generic”, info@company.com email addresses!





The following 5 tips aim to summarise the main items of interest to a B2B marketer wishing to run today cross-border European email campaigns:

INFORMED CONSENT:

- When collecting data, the data controller has to inform the subject of a variety of items: the types of data being processed, the purpose of the processing, the specific recipients in the event of a data transfer, the rights to withdraw consent, etc. Informed consent means that the data subject has to give firm, unambiguous consent (ticking a box, for example) for his or her data to be collected, processed, stored and transferred.

OPT-IN:

- This is where it is compulsory for the recipient of an email marketing campaign to have given prior consent to receiving direct marketing messages via their email address. For many countries (like Germany), the sender of the email has to be able to provide an objective evidence that he received the consent of the recipient. In those cases, it is recommended to obtain a “double opt-in” – collect the data consent via telephone and confirm with a click on an email for example.

OPT-OUT:

- In this instance, a prior opt-in is not necessary, but the identity of the sender must be clear and the email must provide a valid address to which opt-out requests can be sent.

SOFT OPT-IN:

- In most countries a “soft opt-in” is available when the recipient's email address has been collected in the context of a sale of a product or a service and the company uses the email address for direct marketing of similar products or services. A clear and easy opt-out facility must be included in all such communications.

COMPULSORY UNSUBSCRIBE LINK AND IDENTIFIED SENDER:

- It is now mandatory to always include an opt-out facility in every marketing communication sent via email as well as having a very clearly identified sender where the recipient can easily understand which entity is emailing him/her.



WHAT ABOUT CONSENT UNDER THE NEW GDPR?



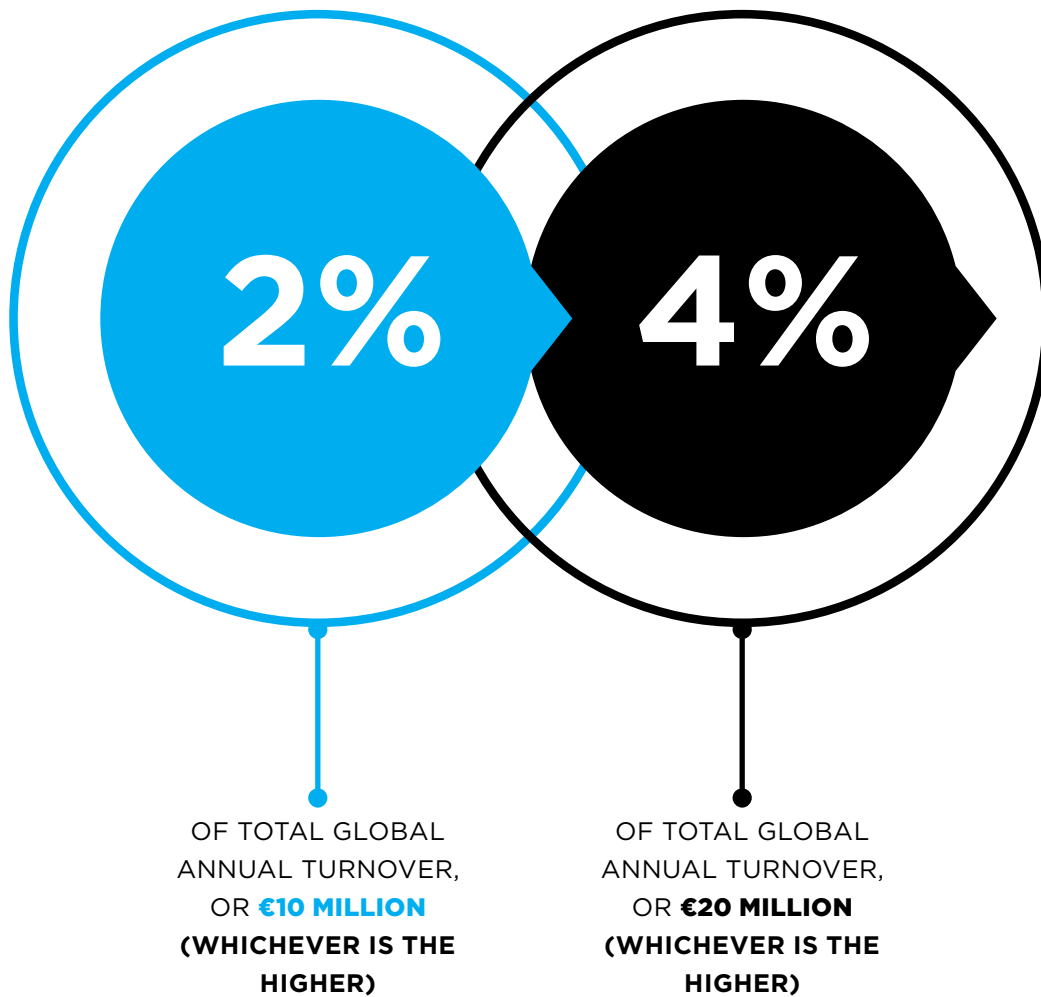
This is a key area of interpretation and one can only expect that there will be further guidance from the authorities and that the generic guiding principles are transposed into the local legal corpus. This will help businesses to ensure they are compliant.

AS IT STANDS TODAY, SOME ELEMENTS HOWEVER SEEM ALREADY CLEAR:

- A) **PRE TICKED- BOXES IN WEB FORMS? SURELY NOT:** *'Silence, pre-ticked boxes or inactivity should not therefore constitute consent.'*
- B) **WHAT ABOUT BUNDLING CONTENT WITH A SERVICE? BAD IDEA:** *'When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.'*
- C) **AUDIT TRAILS ON CONSENT GIVEN? THIS WILL BE A MUST:** *'Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and the extent to which consent is given.'* (Recital 42)

ENFORCEMENT AND PENALTIES

Companies are given the right incentives to comply with the new framework as failure to do so -depending on the nature of the infringement- could lead companies to face fines amounting up to:



SO WHAT'S THE ANSWER?

Organizations are now facing a unique window of opportunity in the area of email marketing before new and a lot more restrictive regulations come into force. The current state of the legislation is still flexible enough in some countries and companies should seek ways to build their marketing databases as quickly as possible. By end of 2018 it will just become more difficult and costly.



ACCOUNT BASED ADVERTISING

With a data-driven, programmatic approach, it is possible to layer digital campaigns to target companies based on their IP address and engage only specific individuals within a larger collective base of potential decision makers, moving into a truly personalized marketing strategy with zero spill-over into non-essential connections. This means that organizations are able to communicate with their key decision makers via online banners (and drive them to landing pages) very much as they used to do with email sending. The end goal (i.e. increasing awareness and identifying interest) is still fulfilled; the difference is in the channel delivering the content. Again, for companies with a focus on outcomes instead of outputs, Account Based Advertising is certainly an option.

DIGITAL AUDIENCES

Digital audiences leverage the insights from the world's largest Ad Networks to communicate with your contacts. Think of it as having your contacts seeing a digital banner when they are on media sites instead of your email message. One example is a very popular social media platform where you can build custom audiences taking as input your contact's emails and target them in their ad network of over 4 million sites and apps. Other platforms are even more powerful as they can target people in your CRM and even create look-alike audiences based on behaviour and engagement. They will match an Internet user's active e-mail anonymously across multiple channels and IDs and deliver banner advertising as they navigate on media sites.



LAST WORD

For a more detailed assessment of the latest changes in the EU Email Permission Legislation and how this can affect your Marketing Automation efforts, do not hesitate to talk to a specialized Agency. We at Celsius can help you with confidence when it comes to outbound online marketing. It is that serious – an email out of place can cause a whole heap of trouble!

That's why we believe that the future is beyond the current email communications and will move towards harnessing the power of digital advertising and beyond traditional channels.

We are literally turning Account Based Marketing on its head to deliver focused and targeted messages to individuals in your most important accounts, may it be prospects or customers.

ABOUT CELSIUS

Celsius GKK International is part of WPP, the world's largest advertising group (NASDAQ: WPPGY). We offer the world's leading Account Based Marketing technology platform and data-driven marketing solutions to support a range of demand generation services. Our mission is to help our customers engage with theirs!

Our HQ is in Sophia Antipolis, France's "Silicon Valley".

Customers include 60% of top 10 Fortune's Most Admired Companies in IT.

In 2016 Celsius GKK International was nominated by Marketo to the Revvie Awards for the Marketing Automation solutions provided to our customers.

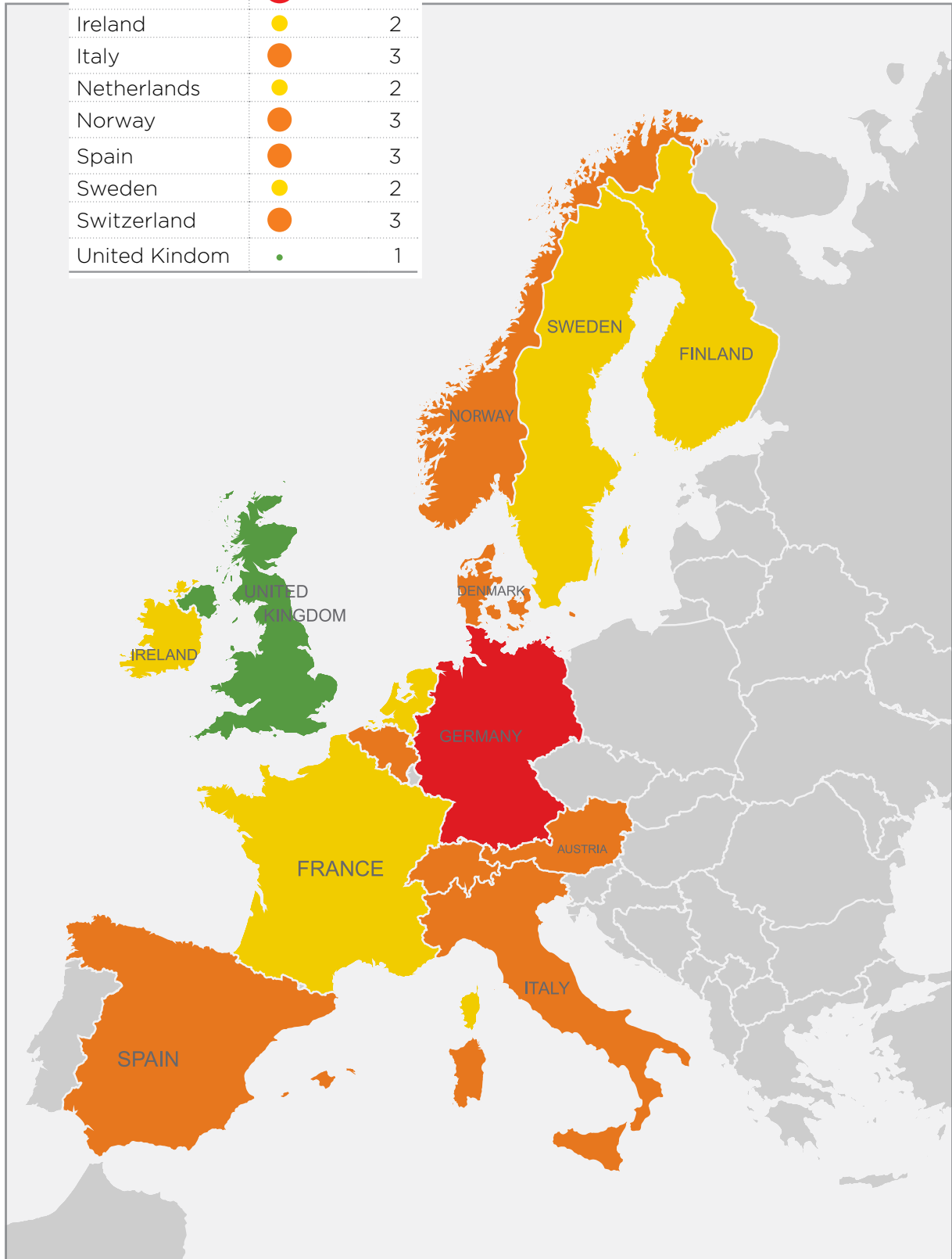
Austria	●	3
Belgium	●	3
Denmark	●	3
Finland	●	2
France	●	2
Germany	●	4
Ireland	●	2
Italy	●	3
Netherlands	●	2
Norway	●	3
Spain	●	3
Sweden	●	2
Switzerland	●	3
United Kindom	●	1

EUROPEAN MAP

How Strict Are Opt-in Requirements in Europe?

1 - Weak

4 - Very Strict



Note: This white paper is for general guidance only and should not be taken as specific advice for your organization. Celsius accepts no liability for any loss or damage of any description incurred in connection with any use of this document. We can, however, provide specific advice and help with your campaigns if you contact us directly.

COUNTRY DETAILS

Country	Law of Reference	Informed Consent	Business Email Address	"Generic" address	"Soft" Opt-in	Compulsory Unsub Link
Austria	§ 107 of the new Telecom-Law 2003 (TKG 2003).	Yes	Opt-in is required if: - the email is sent for purposes of direct marketing, or - the email was sent to more than 50 recipients.	Opt-in not required	Yes	Yes
Belgium	Chapter IV, art. 13 to 15 of 11 March 2003 Law on certain legal aspects of information society services	Yes	Opt-in required in all cases 'Opt-in principle' applies	Opt-in not required	Yes	Yes
Denmark	Section 6(1) of the 2000 and the 2005 Marketing Practises Act.	Yes	Opt-in required in all cases	Opt-in required	Yes	Yes
Finland	the Code for Information Society and Communications Services (917/2014, 'Information Society Code') which entered into force on 1 January 2015	Yes	Opt-in is generally required but IF the product or service advertised is in direct relation to the recipient's job title, prior consent is NOT required.	Opt-in not required	Yes	Yes
France	CNIL's 2 March 2005 Interpretation of the 1995 European Directive regarding email marketing in a B2B environment.	Yes	Opt-in is generally required but IF the product or service advertised is in direct relation to the recipient's job title, prior consent is NOT required.	Opt-in not required	Yes	Yes
Germany	§ 7. of the "Gesetz gegen den unlauteren Wettbewerb" (Law Against Unfair Competition)	Yes	Opt-in required in all cases. Messages must also contain an "opt-out from behaviour tracking" facility, to allow respondents to refuse their open/click behaviour to be tracked and recorded.	Opt-in required	Yes	Yes
Ireland	Section 13 of the European Communities Regulations 2003 (as amended by the Citizens' Rights Directive) effective on 1 July 2011.	Yes	Opt-in is generally required but IF the product or service advertised is in direct relation to the recipient's job title, prior consent is NOT required.	Opt-in not required	Yes	Yes
Italy	Chapter X, section 130 of Legislative Decree no. 196 of 30 June 2003	Yes	Opt-in required in all cases	Opt-in required	Yes	Yes
Netherlands	Article 11.7 of the Dutch Telecommunication Act	Yes	Opt-in required except if the personalised business email address is available publicly on the Internet (in social media for example). In these cases, prior consent is NOT required.	Opt-in required	Yes	Yes
Norway	Act No. 2 of 9 January 2009 - Marketing Control Act - section 15	Yes	Opt-in required in all cases	Opt-in required	Yes	Yes
Spain	General Telecom Law 32/2003 on Electronic Communications Act, amending the 2002 Law on Electronic Commerce and Services of the Information Society (March 2012)	Yes	Opt-in required in all cases	Opt-in required	Yes	Yes
Sweden	The 15 June 2008 Swedish Marketing Act & The Personal Data Act 1998:204	Yes	Opt-in is generally required but IF the product or service advertised is in direct relation to the recipient's job title, prior consent is NOT required.	Opt-in not required	Yes	Yes
Switzerland	New Federal Telecommunication Law of April 1st 2007 - UCA act	Yes	Opt-in required in all cases	Opt-in required	Yes	Yes
United Kingdom	December 2003 Privacy and Electronic Communications Regulations	Yes	Opt-in NOT required	Opt-in not required	Yes	Yes