

POSITION PAPER ON THE REVISION OF THE DATA PROTECTION DIRECTIVE THE CASE OF POSTAL DIRECT MAIL

Brussels, 14 July 2011

PostEurop calls for caution in any tightening up of prior consent rules that currently apply to marketing via the electronic media so that they do not automatically extend to postal direct marketing. Differences between postal and electronic direct mail as far as personal data is concerned make this proposition self evident.

Postal Direct Mail has unique features and provides its own added value to both senders and receivers. The revision process of Directive 95/46/EC should not lead to unnecessary and disproportionate measures affecting postal direct marketing including an unjustified opt-in for postal direct marketing. A prior consent requirement on Postal Direct Mail would be disproportionate to the very limited threat of privacy infringement that Postal Direct Mail poses.

1. Introduction

European postal operators, represented by PostEurop, provide consumers with high quality postal and additional services while protecting customers' privacy. PostEurop welcomes and supports the project of the revision of the 95/46/EC Directive on Data Protection.

PostEurop notes that one of the discussion points concerns the strengthening of the provisions applicable to the processing of personal data for the purpose of direct marketing. In this paper Posteurop explains the essential differences between postal and electronic direct marketing and calls for caution so that the tightening up of prior consent requirements in the electronic media should not automatically be extended to postal direct marketing.

2. Postal operators respect the balance created by the 95/46/EC Directive

The 1995 Directive is based on a balance between data subject's rights and the free movement of personal data. This Directive acknowledges indeed that the duty on data subjects to keep control over their own personal data and the controller's interest to process these personal data are equally legitimate.

A large part of postal operators' activities is based on the balance introduced in 1995. Indeed, Postal "Direct Mail" is directly dependent on the advertiser's right to continue to process personal data without any additional restriction.

In spite of the revision of the 95/46/EC Directive in order to meet the challenges posed by new technological developments, postal operators note that the main principles enacted in this Directive still remain valid. We act in respect of that balance and thereby strive to protect the data subjects' privacy in an adequate and robust manner. Moreover, by self-regulation and using "do-not-mail" lists, the direct marketing sector clearly demonstrates that it highly values and cherishes privacy principles.

3. Postal Direct Mail and electronic direct mail are different

Technological developments and globalisation may require a revision of the Directive. One should nevertheless avoid a revision of the Directive - designed to manage new risks linked to electronic applications - which puts at risk the delicate balance between the free movement of personal data and the data subjects' rights, as it exists in postal Direct Mail.

Postal direct marketing and electronic direct marketing are very different. Postal Direct Mail has specific features and provides added value to both senders and receivers:

- (i) For cost reasons, the number of promotional mails sent by advertisers is limited. We notice that Direct Mail volumes have been remarkably stable for years. Hence, a major increase in postal advertising mail is most unlikely.
- (ii) Direct mail is only used by advertisers if it responds to a sufficient level of (anticipated) interest by the recipients. Direct Mail is designed to be attractive and unobtrusive. In the majority of cases, Postal Direct Mail provides the receiver with relevant, valuable and interesting information
- (iii) In the further developments of commerce, especially e-commerce, Postal Direct Mail will be a key building block in forming a relationship with the customer.

4. Distinct provisions shall apply to direct marketing by postal delivery and by electronic media

When an advertiser wishes to send a promotional e-mail to someone, he must request that person's prior consent (Directive 2002/58/EC, Article 13), whereas if the advertiser wants to send him or her the same message via a physical letter, no consent is required (Directive 95/46/EC). Directive 2002/58/EC reinforces the requirement of consent for electronic media in order to prevent the average citizen being overwhelmed with unsolicited e-mails where the trifling cost of sending an e-mail could easily lead to this.

The revision process of Directive 95/46/EC should not lead to unnecessary and disproportionate measures affecting postal direct marketing. A prior consent requirement on Postal Direct Mail would be disproportionate to the very limited threat of privacy infringement that Postal Direct Mail poses.

PostEurop is in favor of the Commission's proposal on public awareness. It is both wise and prudent to raise awareness levels amongst data subjects as to their role in the protection of their personal data.

This position paper is supported by the following universal service providers:

| Country | Universal Service Provider |
|----------------|--|
| Austria | Österreichische Post AG |
| Belgium | bpost |
| Bulgaria | Bulgarian Posts plc |
| Cyprus | Cyprus Post |
| Czech Republic | Česká Pošta |
| Denmark | Post Danmark A/S - PostNord |
| Estonia | Eesti Post Ltd |
| Finland | Itella Oyj |
| France | La Poste |
| Germany | Deutsche Post AG |
| Greece | Hellenic Post - ELTA S.A. |
| Hungary | Magyar Posta |
| Iceland | Islandspóstur hf |
| Ireland | An Post - General Post Office |
| Italy | Poste Italiane S.p.A. |
| Latvia | Latvijas Pasts |
| Liechtenstein | Liechtensteinische Post AG |
| Lithuania | AB Lietuvos paštas |
| Luxembourg | Entreprise des Postes et des Télécommunications Luxembourg |
| Malta | MaltaPost p.l.c. |
| Netherlands | TNT Post |
| Norway | Posten Norge AS |
| Poland | Poczta Polska |
| Portugal | CTT - Correios de Portugal, S.A. |
| Romania | C.N. Posta Romana S.A. |
| Slovakia | Slovenská pošta, a. s. |
| Slovenia | Pošta Slovenije, d.o.o. |
| Spain | Correos y Telégrafos S.A. |
| Sweden | Posten AB - PostNord |
| United Kingdom | Royal Mail |

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PostEurop is the association which represents the interest of 49 European public postal operators. Committed to supporting and developing a sustainable and competitive European postal communication market accessible to all customers and ensuring a modern and affordable universal service, PostEurop promotes cooperation and innovation bringing added value to the European postal industry. Its members represent 2.1 million employees across Europe and serve to 800 million customers daily through over 175,000 counters. PostEurop is also an officially recognised *Restricted Union* of the Universal Postal Union (UPU).