

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (85) 20

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

**ON THE PROTECTION OF PERSONAL DATA
USED FOR THE PURPOSES OF DIRECT MARKETING¹**

*(Adopted by the Committee of Ministers on 25 October 1985
at the 389th meeting of the Ministers' Deputies)*

The Committee of Ministers, under Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve greater unity between its member states ;

Convinced that it is desirable to apply the basic principles of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, bearing in mind the requirements of particular sectors of activity ;

Aware of the need to protect the privacy of the individual in the face of the growing use of data processing in direct marketing ;

Convinced that the use of personal data is essential to the maintenance and development of direct marketing ;

Recognising that the direct marketing sector is developing its own rules to protect individuals' rights and interests ;

Considering that it is appropriate to promote in this sector the formulation of rules, whether they are legally binding or self-regulatory,

Recommends that the governments of the member states :

— take account, in their domestic law and practice concerning the use of personal data for direct marketing purposes, of the guidelines set out in the appendix to this recommendation ;

— ensure that this recommendation is widely circulated and promote awareness and knowledge of data protection in this field.

1. When this recommendation was adopted, the Representative of the United Kingdom, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of his Government to comply or not with the first sentence of paragraph 2.4, the second sentence of paragraph 3.1 and with paragraph 3.3 as a whole of the appendix to the recommendation.

Guidelines

1. *Scope and definitions*

1.1. The guidelines in this appendix apply to the use of personal data for direct marketing purposes when such data are undergoing automatic processing.

1.2. For the purposes of this recommendation :

“Personal data” means any information relating to an identified or identifiable individual (data subject). An individual shall not be regarded as “identifiable” if the identification requires an unreasonable amount of time, cost and manpower.

“Direct marketing” comprises all activities which make it possible to offer goods or services or to transmit any other messages to a segment of the population by post, telephone or other direct means aimed at informing or soliciting a response from the data subject as well as any service ancillary thereto.

2. *The collection of data for direct marketing purposes*

2.1. Any person, when drawing up marketing lists, especially lists of names and addresses for his own marketing purposes, should be able to make use of data derived from previous relations with actual or prospective customers or contributors.

2.2. Subject to any restrictions laid down by domestic law, any person should be able to collect personal data for direct marketing purposes from files open to the public and other published material.

2.3. The collection of names and addresses of private persons from other private persons for purposes of enlarging marketing lists should be permissible only if carried out in compliance with appropriate safeguards designed to protect the privacy of the person concerned. Domestic legislation may prohibit this practice or make it subject to more restrictive conditions.

2.4. The collection of data from an individual for any reason other than normal customer or contributor relations should be permissible for direct marketing purposes only on condition that this has been expressly stated at the time of collection.

The collection of data from an individual by deceptive representations should not be permissible.

2.5. Where permitted by domestic legislation, personal data falling within the special categories referred to in Article 6 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data should be collected and used for direct marketing purposes only in accordance with the relevant safeguards provided by national law and, where appropriate, only with the express consent of the data subject.

3. *The making available of lists to third parties*

3.1. Subject to the provisions of paragraph 2.5, it should be possible for marketing lists to be made available to third parties for direct marketing purposes provided that the data subject has been informed directly or by some other appropriate means at the time of the collection or at some later stage of the possibility of transmitting the data to third parties and unless he has objected.

Unless the data subject has given his consent, the lists should not provide any information liable to infringe his privacy.

3.2. The making available of marketing lists to third parties for their direct marketing purposes should be the subject of a contract stipulating the conditions under which they are to be used.

3.3. In order to facilitate exercise of the rights under Chapter 4, controllers of marketing files should keep a record of all the users of their lists.

4. *The rights of the data subject*

4.1. Any person should be able, where appropriate, either :

- i. to refuse to allow data concerning him to be recorded on marketing lists ; or
- ii. to refuse to allow data contained in such lists to be transmitted to third parties ; or
- iii. unconditionally and on request to have such data erased or removed from several or all of the lists held by users.

In addition, any person should be able to obtain and rectify data concerning him which are contained on a direct marketing list or marketing file.

4.2. Appropriate measures should be taken so as to enable the data subject to exercise his rights under paragraph 4.1 and to identify the controller of the marketing file.

The controller of the marketing file should be obliged to take all appropriate measures to notify users recorded by virtue of paragraph 3.3 that the data subject has exercised his rights under paragraph 4.1 so that any necessary changes can be made to the lists.

5. Presentation of marketing messages or material

The goods and services offered and the messages transmitted should be presented in such form and manner that the privacy of the addressee is not prejudiced.

6. Data security

In the compilation of files of personal data for direct marketing purposes, all appropriate technical and organisational arrangements should be made to ensure the security and confidentiality of the data, having regard to the requirements of this sector.

Both the controllers of files and the personnel involved in processing the data should be kept informed of these arrangements and of the need to observe them.

7. Measures concerning implementation of the recommendation

7.1. The development of self-regulatory measures within the direct marketing sector should be encouraged so as to facilitate the settlement of problems relating to the safeguards provided for in this recommendation, especially as regards the removal of names from marketing lists.

7.2. Appropriate measures should be adopted so as to ensure compliance by list brokers and address services with the provisions of this recommendation.

7.3. Appropriate information about the safeguards laid down in this recommendation should be made available to the data subject.