



**REPUBLIC OF ALBANIA  
COMMISSIONER FOR PROTECTION OF PERSONAL DATA  
OFFICE OF COMMISSIONER**

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**INSTRUCTION**

**No 6, Dated 28/05/ 2010**

**ON**

**THE CORRECT USE OF SMS-es FOR PROMOTIONAL PURPOSES,  
ADVERTISEMENTS, INFORMATION, DIRECT SALE, VIA MOBILE PHONE  
NETWORK**

Abiding by the obligations set out by letter “c”, point 2, of Article 27, letter “c”, of point 1 of Article 30, of the law No 9887, dated 10.03.2008 "*On Protection of Personal Data*";

**INSTRUCT**

- 1.** The operators of communication services as well as other interested entities using messages (sms) for promotional purposes, advertisements, direct sales, information, shall obtain the **preliminary consent** and **freely inform** the entities of the personal data.
- 2.** The operator of a mobile phone service may make use of the number of the mobile phone of the user for commercial purposes, provided the subscriber has preliminarily given **his consent**.
- 3.** The consent shall be explicit and determine that the operator of the mobile phone service shall have the right to announce via message (sms) the "service" of various entities, as well as all the operator himself, if he promotes a "service", following these criteria:
  - a) This principle shall apply in connection with messages (sms) sent automatically by the operator to a considerable number of subscribers be interested, without the direct intervention of his employees.
  - b) It shall apply to messages (sms) sent on case basis for separate subscribers or their groups.

c) This principle is valid also for users of mobile phones through prepaid phone cards.

**5.** The consent shall be obtained in the ways provided for in the law No 9887 dated 10.03.2008, "On Protection of Personal Data" as well as over the phone, it is enough that it is expressed to the operator clearly and documented in writing (*keeping the statement of the subscriber or user of the card or transcribing the statements of the latter*).

**6.** The operators of telecommunication services and other interested entities may not use as **expression of the consent the signing of the contract, or activating of the prepaid card**, for the reception of messages of promotional advertisements and direct sales, information etc. (*Article 6, law 9887 dated 10/03/2008*)

**7.** It is forbidden to include in the contract entered into with the operator of the mobile network a **standard statement of "obligation"** for the use of promotional messages (sms), advertisements, direct sales, information etc.

**8.** It is forbidden to disseminate messages (sms) for advertisements circumventing the conditions mentioned above, in that presentation by the operators as "service messages" for their use and specifically:

a) Excluded shall be the cases where the operator of the mobile telephone service sends a message (sms) to make known appropriately and legitimately events or news closely and indispensably connected with the offered service (*for instance, offering of the assistance service or telephone secretary, situation of reception with messages or payments, booking of card*).

b) Forbidden shall be the cases where the messages (sms) are connected with the sale of the phone sets, or new commercial offers, additional services in connection with the ways of using the messages, along with logos and sounds, connections with other companies, collections of points or for competitions.

**9.** Forbidden shall be the sending of messages (sms) of advertisements based on a preliminary verification of the location of mobile phone, or other circumstances where the user has just called certain numbers or has asked for a service over the phone.

**10.** The principle of "granting the consent" shall also be used in other cases where the messages (sms) of advertisements have been sent from other entities, specifically operators of electronic communication services (for instance, managers of websites offering the possibility of having an electronic address "free of charge" or the service of sending free of charge SMS-es through the computer), and those conducting activities in other fields, based on the information of data banks of users and consumers, collected for example from receipts, cards of supermarket etc.

**11.** The principle of granting the consent shall also be valid in the cases where the messages (sms) are sent up on the request of the public administration and for the distribution of

messages called for "public interest" using a data bank of private operators.

**12.** In the event of messages (sms) sent by associations, legal organizations, or third parties, to their own members, in addition to a necessary consent in writing, the legal conditions and criteria for the sensitive data shall be abided by (Article 7 of the law).

**13.** The operators of telecommunication services and other entities shall, in the event of sending the messages (sms) of advertisements, **obtain the specific consent** from entities of the data. The expression of a will and specific consent shall be expressed clearly aimed at the types of messages (sms) of advertisements that might be sent (*Article 6 of the law 9887, dated 10/03/2008*).

**14.** The entities of personal data shall be informed, precisely and not generally, not to accept signing up to an unclear statement for expressing the consent.

**15.** Where making available the lists with phone numbers of third parties for advertisement purposes, circumstances shall be explained to the entities of the data precisely, in order to avoid the abusive use by third parties, who may be "responsible for processing" of the personal data, specifically when third parties follow up entirely other purposes.

**16.** The principles mentioned in this instruction shall apply also to the entities sending messages (sms) of advertisements without taking the phone data from a specific data bank, but based a **casual combination or automatic combination of numbers**, stemming from the verification of their existence or activating.

**17.** The entities of data may exercise all their rights provided for in Article 12 of the law no 9887 dated 10.03.2008 "On Protection of Personal Data", access to know the source of data, requests for deletion in the event of a legal processing etc. with regard to messages (sms) of trading and advertisements, in the event of withdrawing the consent given in advance, or objecting even partially the processing of the personal data for the purposes of commercial information, sending of advertisement materials or direct sales, meeting researches in market, interactive commercial communication. The exercise of these rights according to the agreement shall be allowed even where the messages (sms) have been sent in the framework of providing services "free of charge".

**18.** All the operators of the mobile network, all entities interested in the use of messages (sms) promotional purposes, advertisements, information, direct sales, are obliged to abide by the principles mentioned in this instruction.

*This instruction enters into effect immediately.*

**COMMISSIONER**

**FLORA ÇABEJ (POGAÇE)**