

11. PREMIUM SMS SERVICES (PSMS)

A condition for the allocation of a Short Code Number by ComReg (ODTR 02/14) is that Network Operators and Service Providers agree to abide by this Code of Practice.

11.1 General

11.1.1 Only PSMS services authorised by the Regulator may be operated by a Service Provider.

11.1.2 Short Code Numbers must be used only for the Service authorised by the Regulator.

11.1.3 Service Providers must not send, or have others send on their behalf, unsolicited, random, or untargeted telecommunications messages (referred to as SPAM), and the use of PSMS must not be promoted by the use of such messages.

11.1.4 The Consumer must have the right to ‘opt-in’ or ‘opt-out’ of any promotion or Service, whether subscription based service or otherwise.

11.1.5 No PSMS Service may be promoted as being “free” if it involves any charge whatsoever to a Consumer. No product or service may be described as “free” if it is obtainable only by the use of a Premium Rate Service involving a charge to a Consumer.

11.1.6 Service Providers are permitted to charge Consumers, whether on a subscription basis or otherwise, only for specific PSMS services and content which the Service Provider can demonstrate to the satisfaction of the Regulator the Consumer in question has agreed to receive and pay for.

11.1.7 All PSMS Promotions must carry the mobile number and the Short Code Number of the originating Service Provider.

11.1.8 Text messages sent and received by Consumers must be stored by the Service Provider for a period of six months from the date of the message.

Service Provider Administrative Responsibility is set out in Section 3 of this Code of Practice.

11.2 Pricing Notification

In addition to the rules laid down in Section 7 of this Code (Pricing) the following special conditions apply to PSMS.

11.2.1 Any Promotional Material for PSMS must include full pricing information inclusive of VAT and any other cost associated with the Service.

11.2.2 Consumers must be notified on incurring charges of €20 and be required to confirm in text format if they wish to continue the Service. The maximum spend per transaction shall not exceed €40 or other such amount as may be specified by the Regulator. Any transaction exceeding that sum is not permitted.

11.2.3 Pricing information requested by the Consumer must not be charged at a Premium Rate price and in any event must not be more than the standard network charge. The Regulator considers it best practice that such information be free of charge.

11.2.4 The maximum per diem rate for interactive services is €10 or such other sum as may be fixed by the Regulator from time to time, whether generally or in respect of any specific category of service.

11.2.5 Service Providers must ensure that the maximum charge for each PSMS is clearly stated in all promotions. Prices per PSMS must be noted in the form of numerical price per message (inclusive of VAT), the total number of PSMS and/or the total maximum cost of the Service to the Consumer (inclusive of VAT). In respect of any PSMS service or category of PSMS service, the price per message and number of messages required to complete the transaction must be stated in all Promotional Material.

11.2.6 The price per PSMS message for the Service must be associated directly with the Short Code Number and be clearly legible to the Consumer in all Promotions. Each reverse billed PSMS message must show the Short Code from which the PSMS originates to make it clear that a charge applies.

11.2.7 The Regulator reserves the right in the case of a PSMS Subscription Service, or any particular category of such Service, to require that Consumers be informed of the maximum number of messages before they enter the Service and be informed that a Premium Rate Charge is applied per message received.

11.2.8 In relation to Subscription Services the words “daily Subscription Service”, “weekly Subscription Service” or “monthly Subscription Service” must be displayed visually, and not requiring close scrutiny, in all Promotional Material. In relation to television promotions, this information must be displayed clearly at the top of the screen in a stationary manner and not requiring close scrutiny.

11.3 PSMS Subscription Services

11.3.1 All Promotional Material for PSMS Subscription Services must contain the following information in a clear and legible font:

- (i) a description of PSMS Subscription Service and the frequency of charging, including the initial charge;
- (ii) confirmation to the Consumer that the PSMS Subscription Service incurs a recurring/repeat charge to the Consumer;
- (iii) information on how to “opt-out” or “unsubscribe” using only the words “STOP” or “STOP ALL”; and
- (iv) the identity and contact details of the Service Provider.

11.3.2 On subscribing to a PSMS Subscription Service, the Consumer must be sent a free information message containing the following:

- (i) that Consumer has entered a Subscription Service together with details of charging period (daily, weekly, monthly);
- (ii) the cost in euro;
- (iii) the fact that the Consumer can “opt-out” of or “unsubscribe” from the Service by texting the words “STOP” or “STOP ALL” to a designated Short Code Number; and
- (iv) contact details for the Service Provider.

11.3.3 Service Providers must provide Consumer ‘opt-in’ (subscribe) and ‘opt-out’ (unsubscribe) facilities for all Subscription Services, to enable Consumers to “subscribe” and “unsubscribe”. Consumers must be allowed to unsubscribe by texting the word “STOP” or “STOP ALL” to the Service Provider. The Regulator reserves the right to designate other standard words which may be used by Consumers for this purpose. The word “STOP” and other designated words to unsubscribe must be effective without being case sensitive. Where a Consumer texts the word “STOP” to unsubscribe from a PSMS Subscription Service, the Service Provider must cease the charging and the provision of the service to the Consumer with immediate effect. Where the Consumer has subscribed to more than one PSMS Subscription Service offered by the same Service Provider and texts the word “STOP”, the Service Provider must cease forthwith to provide the PSMS Subscription Service of which the PSMS message most recently forwarded to the Consumer formed part. If, in such cases, the Consumer texts the word “STOP ALL” to the designated number, the Service Provider must cease the provision and charges to the Consumer for all PSMS Subscription Services.

11.3.4 When a consumer has spent €20 (or such other amounts as may be specified by the Regulator), the Service Provider must send a free reminder message containing details of the subscription service, charges, frequency of charges and the opt-out facility using the words “STOP” or “STOP ALL”.

11.3.5 Service Providers must not raise a Premium Rate charge to provide information about a PSMS Subscription Service or its availability. A Premium Rate charge may only be raised when the PSMS Subscription Service itself has been delivered to a Consumer.

11.3.6 Where a Consumer has subscribed to a PSMS Subscription Service and fails to respond to a sent message within 40 days, the Consumer must be opted out or unsubscribed automatically from that and/or related PSMS Subscription Services and must be removed from the database. The charge for unsubscribing/opting out be no more than the standard text charge.

11.4 Promotion/Marketing

11.4.1 All Promotional Material for PSMS must contain detailed pricing information, inclusive of VAT and any other cost associated with the Service.

11.4.2 All Promotional Material must contain contact details for the Service Provider and ‘opt-out’ options.

11.4.3 Promotional Material must relate only to Services authorised by the Regulator.

11.4.4 For the period that a consumer remains on a direct marketing database, Service Providers must retain records of:

- (i) the Consumer opting into the direct marketing database;
- (ii) the Consumer subscribing to a Subscription Service; and
- (iii) the sending and receiving number and the date, time and content of direct marketing promotions.

11.4.5 In the case of advertising and promotions other than direct marketing, Service Providers must retain records of the Promotional Material for a minimum of 6 months. This must include:

- (i) the content of the promotion; and
- (ii) the date and time that the promotion was sent/published.

11.5 Text ‘Chat’ and Group ‘Chat’ Services

11.5.1 For ‘Text Chat’ Services, Service Providers must receive confirmation from the Consumer that they are over 18 years before initiating the Service. All Promotional Material must contain a communication to the effect that this service is available only to those over eighteen years of age.

11.5.2 For ‘Group Chat Services’, Consumers must be informed of the maximum number of messages before they enter the Service and must be informed that the Premium charge is applied per message received. This must be stated in all Promotional Material.

11.5.3 Forced Release

A Consumer once connected to a Text Chat Service, who has not participated for a period of 45 minutes after connection and has not reached the spend limit, must be informed by a cost-free message that the Service is being disconnected, and the Service must then be disconnected. Any continuation of the Service is prohibited.

11.5.4 Security Measures

Service Providers must build in safeguards to the satisfaction of the Regulator to ensure that no sexually suggestive or explicit material is transmitted in the course of the Service.

11.6 Personal Messaging Services (Text ‘flirt’ Services)

Where an individual has passed on a mobile number to a Service Provider providing the above Service, the Service Provider must provide an ‘opt-out’ facility for the recipient. If requested by the recipient of the message, the Service Provider must also pass on the number of the caller who prompted the sending of the original message. Service Providers must receive confirmation the Consumers are over eighteen years before the initiation of the Service.

Provisions relating to Contact and Dating Services are set out in Section 8.6 of this Code.

11.7 Services of a Sexual Nature Operating on 59xxx Short Code

11.7.1 In addition to the provisions set out in Section 8.4 of this Code, Service Providers must provide security measures to ensure that only Consumers over eighteen years of age have access to such services. Services of a sexual nature as defined in this Code of Practice must be designated by a specific Short Code Number (currently 59xxx), and accessible only by the use of a Personal Identification Number (PIN). This PIN is issued by the Service Provider to the Consumer seeking to avail of this type of Service and must be unique to each individual Consumer.

11.7.2 Appropriate security measures must be in place to the satisfaction of the Regulator before such Services are authorised.

11.7.3 PSMS of a sexual nature must not contain references which suggest or imply the involvement of children.

11.7.4 Promotion of PSMS of a sexual nature must not appear in publications intended for children or young persons, national publications or in publications which are unsolicited, e.g. free distribution newspapers (referred to as “free sheets”).