

**COMMISSION PROPOSAL FOR A DIRECTIVE CONCERNING THE PROCESSING OF PERSONAL DATA
AND THE PROTECTION OF PRIVACY IN THE ELECTRONIC COMMUNICATIONS SECTOR
COM (2000) 385**

STATEMENT

In light of the vote which took place in the European Parliament plenary session on 6 September 2001 on the Cappato Report as adopted by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, UNICE wishes to express its regret that the aforementioned Report did not find a broader majority leading to the adoption of the Commission proposal accordingly amended.

Although the Cappato Report and several amendments to the Report proposed by other Members of the European Parliament were adopted, the amended Commission proposal is now on hold. The proposal has therefore been referred back to the aforementioned Committee. A new Report shall be subject to a vote in plenary in the coming months.

Though, the opt-out/opt-in debate for unsolicited electronic communications (Article 13) dominated the European Parliament's debate, UNICE wishes to reiterate its belief that the Cappato Report improves the Commission proposal also in a number of other key areas and strikes an important balance for industry on: data retention (Article 15), traffic data (Article 6), and directories (Article 12). We hope that also those Amendments will find a majority.

Unsolicited communications

A passionate debate centred on the issue of unsolicited communications seems to have led to confusion. UNICE shares concerns regarding '*spamming*' (i.e. untargeted mass e-mailing which is already illegal under existing EU legislation). At the same time we know that imposing a European-wide opt-in clause is not the appropriate solution. An opt-in solution whereby consumers would be asked for their consent prior to companies conducting e-mail marketing would prevent most companies from conducting legitimate marketing and would be ineffective in preventing '*spamming*': most of illegitimate mass e-mail marketing originates beyond EU borders and will not disappear with an opt-in regime within the EU.

UNICE is of the opinion that existing Directives on data protection, eCommerce, misleading advertising, unfair terms in consumer contracts and international and European intellectual property laws are sufficient to prevent spamming providing they are correctly implemented in Member States. In addition, it has been brought to UNICE's attention that the European Commission is currently discussing whether it is appropriate to address '*spamming*' in the context of a Council Framework Decision under Title VI of the Treaty of the European Union to approximate criminal law in the area of attacks against computer / information systems to be proposed shortly.

In the wake of the aforementioned European Parliament vote and in view of the future vote, UNICE favours a conditional opt-out system, combined with a review clause after 3 years. Such a system is respectful of the position taken in the Cappato Report (previously supported

by UNICE) and takes into consideration most of the objections voiced by other parliamentarians.

UNICE suggests:

- Companies should be further encouraged to subscribe to codes of practice before offering goods and services by electronic means;
- An essential element of the code should be an opt-out register. Code subscribers would be obliged to check the addressees of commercial messages sent via e-mail against opt-out registers of prospects not wishing to receive such communications;
- Commercial messages sent via email to prospects having opted out would not be allowed;
- Companies that have not signed up to a relevant code of practice could be subject to the opt-in solution.

UNICE realises the challenges of implementing a good working system of national opt-out registers. Nevertheless, industry is committed to self-regulated solutions such as the one described above which are essential for boosting the prospect's trust.

UNICE encourages Members of the European Parliament to bear this self-regulated system in mind when drafting Amendments to the Commission's proposal [COM(2000)385].