

Double Opt-In and Legal Basis for Sending SMS

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The most important facts at a glance:

Consent

- Must be given voluntarily and actively (no pre-selected checkboxes)
- Information on the use of the data must be given prior to consent ("general agreements" are prohibited, purpose must be stated in detail)
- You must be able to prove the agreement at any time, because
- The customer has the right to view and revoke the consent at any time
- Revocation must be as easy as consent
- Minors under the age of 16 can only give their consent with the consent of a guardian
- Consents may expire if they are not used for the respective purpose in a long time

Advantage: Consent can be proven at any time in case of dispute

Legitimate Interest

- Applicable especially in already existing customer relationships
- Customers have to know already that their data is being processed to a certain extent (meaning you have pointed this out, for example in the data protection declaration)
- You have weighed your legitimate interest (economic interest is legitimate) against the interests of the recipient
- Your messages constitute only a minimal invasion of privacy for the receiver
- You need to send the message in order to pursue your legitimate interest

Caution: If the recipients are minors under the age of 16, their privacy will always win over your interest in cases of doubt.

Double Opt-In

- Not required by law, not completely legally secure
- Recommended because in case of dispute authorities have often decided in favour of those parties that made use of the double opt-in
- Reduces the risk of misuse of numbers
- Should be obtained via the channel that is also used to send messages (i.e. via mobile phone in the case of SMS)

The request for confirmation should include

- The name of your company
- Information on how often and for what purpose you will send SMS
- The possibility to revoke the consent/unsubscribe
- Depending on the destination country, information on costs when replying to the SMS

Two ways to obtain consent on the mobile phone:

- Enable reply via SMS (you will need an inbound number)
 - Pro: Can be confirmed from any mobile phone
 - Con: Customers bear the costs for confirmation SMS
- Reply via Link
 - Pro: Free of charge
 - Con: Requires an internet connection and is therefore not accessible from all mobile phones

Agreement on commissioned data processing

- Necessary in most cases where third parties are involved in the processing of data (or if they have access to this data)
- Content depends on many factors, examination by data protection officer or legal counsel recommended

Important! The overview you have just read is only informative. This overview does not constitute legal advice and can in no case replace individual legal advice. We do not guarantee that the information is up-to-date, complete and correct. Furthermore, it deals with legal regulations in Germany. While the GDPR is valid in the EU, other laws may apply in other countries. This is also true for cases in which the GDPR is not applicable.