

Luxembourg's Mobile Services Code of Conduct

1. Definitions

You / the Provider: the mobile operator's or Aggregator's contractual client and this client's employees, agents, sub-contractors, consultants, and generally anyone acting under its responsibility making use of Luxembourg's mobile operators to provide Mobile Services.

Mobile Service: any mobile message (SMS, MMS, etc) You send or receive, and any Premium Service You offer.

Premium Service: product or Service You provide to the User, in exchange of payment made by Premium SMS or Direct Billing.

Direct Billing: using Luxembourg's mobile operators to charge for a product or Service directly to the User, by means of an explicit agreement from the User. The User's mobile operator will request payment for the product or Service from the User, and follow an agreed commissioning model and payment flow.

User: person that makes use of and/or purchases Your Mobile Service and has a valid mobile phone number (MSISDN) from one of the national mobile operators

Aggregator: a direct client of Luxembourg's mobile operators, that acts as a technical intermediary between You and the mobile operators for the purposes of the Mobile Service.

Opt-out: a request from a User choosing to unsubscribe to Your Mobile Service or choosing not to receive any further messages from You. It is a request to remove the mobile number (MSISDN) from Your Subscription or communication list. Simultaneously it is a request from a User choosing not to receive any further messages from any business You have shared this User's information with.

Marketing Material: Your brochure, website, mobile site, and any other commercial support that promotes Your products and Services (ii) Your advertising in radio, television, press, magazines, any other printed material, displays, teletext, websites, mobile sites (iii) Your direct marketing practices such as mail correspondence, emails (iv) or generally any form of promoting Your product or Service to the User.

Pay-per-use: A one-time purchase of a Mobile Service.

Subscription: Recurring Service initiated by a sign-on process.

Operated or Computer Chat Services: are Services that use remunerated (human) entertainers or automatic response systems. It refers to SMS/MMS Chat Services that do not establish direct connection between two or more Mobile Users (i) that send/receive their SMS/MMS Over-The-Air and not via direct connections to SMSC/MMSC (ii) and that are not directly/indirectly employed or mandated by You.

MO (Mobile Originated) refers to a SMS or MMS sent by a User from his mobile phone.

MT (Mobile Terminated) refers to an SMS or MMS received by the User on his mobile phone.

Business Hours: must be at least from Monday to Friday, during 8 consecutive hours between 6.00 and 22.00 CET, excluding Luxembourg legal holidays.

2. User Consent

You must guarantee that addressed Users:

- Have consented to receiving Your message or content,
- Will not receive unsolicited messages or content,
- May Opt-out from any such Service by means of an easily accessed and free-of-charge or non-premium charged mechanism.

Marketing prospection done by SMS/MMS:

- Must be of no cost to the User,
- Must contain a reminder of a free or non-premium charged and easy op-out mechanism,
- Must be restricted to products and Services that are the same or similar to those You originally provided. You must obtain additional consent from the User to promote dissimilar or unrelated products and Services,
- Is ruled by the modified Law of 14th August 2000 concerning electronic commerce.

Any MSISDN (mobile number) that does not receive Your SMS MT during 2 consecutive months must be considered as an Opt-out. This prevents unsolicited messages, as Luxembourg mobile operators may reallocate MSISDN that are not being used.

On simple request from a mobile operator, You have to provide without delay proof of subscription or consent for a particular User or MSISDN. If such proof cannot be given, any revenue generated by such user or MSISDN can be claimed back or withdrawn from a later payment.

3. Premium Services

3.1. Pay-per-use

The following must be clearly visible on all Your Marketing Material (including Your website) in a way that it can be read without effort:

- Name of Service,
- Fair description of the Service,
- Price of Service, in €. If several Premium messages or payments may be necessary to access the entire Service as You have described it, state the maximum amount that may be paid ("max"),
- Your customer Service telephone number or email address.
- All prices must include VAT.

3.2. Subscription-based

3.2.1. What must be stated in Your Marketing Material

The following must be clearly visible on all Your Marketing Material (including Your website) in a way that it can be read without effort:

- Name of Service,
- Your customer Service contact details,
- The opt-out mechanism (see article 4)
- Price to subscribe,
- Price of Service (state one of the following two):
 - *Services costing Users 6 € per week or more:* Example: "64111 – Join Club Ringtones for 6 € per week, excluding SMS". The wording is "6XXXX – Join / Subscribe to [name of Service and optional description maximum of 35 characters] for [cost of Service in €] per [billing frequency], excluding SMS",
 - *Services costing Users less than 6 € per week:* Example: "64111 – Join Club News for 0.35€/SMS received, max 10 SMS per week". The wording is "6XXXX – Join / Subscribe to [name of Service and optional description maximum of 35 characters] for [cost per SMS received in €], max [number of SMS] SMS per [billing frequency]". Do not state "excluding SMS" when there is no SMS MO required for the User to

make use of the Service (excluding opt-in and Opt-out SMS). Optionally, these services may use the wording for “services costing Users 6 € per week or more”.

- All prices must include VAT.

3.2.2. Reminders

If Your subscription service applies 0.50 € or more per SMS MT, or costs Users 6€ or more per week, at least once per month send a SMS MT (at no cost to the User) to remind subscribed Users of:

- The cost per period (if fixed price) or per message (if variable price), including VAT,
- An explanation of how the User may Opt-out from the Service,
- Your customer Service contact details.

This may be at the end of a Service message, but must remain free to the User.

This must be (in this order of preference): (i) in the Service language selected by the User, or (ii) in the Marketing Material’s language, or (iii) in French if You can’t identify the language.

Examples:

- Price per message: “Champions League Club. Real M 1, Sporting 0. Each sms costs 1€ To leave sms STOP to 64111.Helpline-2633851” (as long as the additional text is sent at no cost to the User),
- Price per period: “You are subscribed to Club Ringtones from Looneytunes for 6€ per week. To leave, sms STOPTONES to 64111.Helpline-2633851”.

4. Opt-out (STOP)

- There must be various ways for a User to opt out from requested or subscribed services. At least the following options have to be provided:
 - by sending an opt-out SMS (details see below)
 - by sending an email or a letter to the provider
- If a mobile network operator receives a request from one of his customers (e.g. by a call to the helpdesk), he must be able to forward this request to the providers
- An opt-out SMS is an SMS MO starting with the word ‘stop’. The word stop can be written in any mix of lower or upper case letters.
- An SMS MT (free or without premium charge for the User) should be sent to the User to confirm the termination of the Marketing Prospection or Premium Service. You may promote how to rejoin the Service in the same SMS, but must begin the SMS with the confirmation of Opt-out. This SMS must be factual, non-adult in nature (Example: “I miss you” is not a valid confirmation).
- A STOP SMS sent to a short code will terminate the Mobile Services from that short code as follows:
 - If the short code is used for only one Service then that Service will be terminated.
 - If the short code is shared between several Services then:
 - STOP mechanisms specific to each Service running on a Short Code (Service-specific STOP), such as SMS MOT starting with “STOPABC”, have immediate effect.
 - If You have not implemented Service-specific STOP, You or the Aggregator terminate all Services the User is signed up to, with immediate effect.
 - If Service-specific STOP mechanisms do exist but instead of using them the User sends a SMS MO starting with the word “stop” (not corresponding to a Service-specific STOP), You or the Aggregator will find-out by any suitable means (SMS, telephone, etc), which Service the User would like to Opt-out from, within 4 Business Hours. If the customer is not reachable within this period, all services have to be stopped.
- No minimum Subscription period can be applied to a Mobile Service.
- The STOP mechanism must be free of charge or without premium charge to the User,.
- An operator may ask to opt out a user in case the user does not pay his bills.

5. Quality of Mobile Services

- If by nature the Service is not available 24/7, Your Marketing Material must inform Users of the Service's opening hours.
- An error SMS MT must be sent to Users trying to access Your Service when:
 - Your Service is not available during opening hours,
 - The User's request cannot be processed.
- In general, the quality of the Service has to be according to the User's reasonable expectations.
- You must inform Your Aggregator and the mobile operators with 24 Business Hour's notice of any scheduled maintenance
- Any change in the nature of the offered services has to be notified to Your Aggregator and the mobile operators with at least 2 working days advance notice.

6. Customer Service

Your User customer service must be available during Business Hours, at the contact details specified in Your Marketing Material and reminder messages.

Deadline for Your first response to User requests:

- Requests done by email or telephone: within 8 business hours,
- Requests done by post: within 5 business days.

7. Personal Data Confidentiality

Before generating a database containing MSISDN (mobile numbers) or other personal details, You must declare Your opt-in list to the CNPD if required (*Commission Nationale pour la Protection des Données*). Please refer to www.cnpd.lu for further details.

8. Forbidden Mobile Applications

Any mobile service offered must comply to Luxembourg and international legislation. The rules set by the national data protection commission (CNPD) have to be followed strictly.

Furthermore You agree not to send any message or software to Users that that might:

- Give access to Users' personal data,
- Impact the SIM card or mobile device.

9. Breach and Refunds

If You breach this code of conduct or act illegally or if a mobile operator has reasons to believe you breach the code or act illegally (e.g. following to customer complaints), Luxembourg's mobile operators may suspend the Mobile Service in question, withhold payments, refund Users, and charge You or the Aggregator with any cost incurred to investigate the breach.

10. Specific Services

10.1. Operated or computer SMS or MMS chat Services

- You may only bill MO messages,
- Your Marketing Material must:
 - Follow the guidelines stated in this code of conduct for "Premium Services – Pay per use",
 - Clearly indicate next to the price information, in same font size and color:
 - A description of the Service that reflects its exact nature: entertainment Service, operated Service, etc.,
 - That it is managed by operators - *géré par des opératrices*.

10.2. Prize draws

- Must be
 - Free of charge (standard SMS), unless clearly indicated in the marketing material
 - If not free of charge, You must offer participants a refund for their Premium payment.
- Must comply with Luxembourg's current legislation, namely the Law of April 20, 1977 (*Jeux de hasard et paris relatifs aux épreuves sportives*), the Penal Code articles 301 and 302, and the Law of July 30, 2002 (*Concurrence déloyale*).
- Main rules as stated by the Law of July 30, 2002, for information only:
 - You must allow Users to participate to the draw without buying anything from You.
 - Rules must be declared with a Civil Servant (*Huissier de Justice*), before any marketing.
 - Rules must be communicated free of charge to anyone requesting them.
 - The number of prizes, their value, and conditions to participate must be communicated clearly and with precision.
 - If Your communication leads the User to believe he has won the prize, You must deliver the prize to the User in question.