

Opinion of the Consultative Committee for the Financial Sector on cold calling in the insurance industry

Background

Cold calling is the practice of contacting a consumer by telephone to offer a product or service without that person having made an explicit request to the salesperson conducting the call to do so. Under the distance selling legislation in force, consumers must be given specific information before entering into a contract. This requirement applies to all consumers, including insurance customers, and is intended to ensure that they are able to exercise informed consent. Consumers also have a right of withdrawal.¹

The distribution of insurance contracts is also regulated under the terms of the Insurance Distribution Directive (IDD) that was transposed into French law by Order No. 2018-361 of 16 May 2018. Although this legislation applies to all operators on the French market, the members of the *Comit  consultatif du secteur financier* (CCSF – Consultative Committee for the Financial Sector) agree that particular attention should be paid to unsolicited telephone calls (cold calling) to prospects.

The *Autorit  de contr le prudentiel et de r solution* (ACPR – Prudential Supervision and Resolution Authority) has repeatedly found that the practices of certain market players do not comply with consumer protection regulations and that the elderly, and indeed the very elderly, make up a significant proportion of the prospects contacted.

Moreover, consumer associations have called for cold calling to be banned on the grounds of the complexity of insurance products and the “considerable” number of customer complaints. Pending this initiative, they consider that cold calling must urgently be reviewed, within the framework of the CCSF, in order to ban the so-called “single call sale” technique for the distribution of insurance contracts during unsolicited telephone calls, as they feel this is essential to guarantee the quality of consent of consumers caught off guard by a call they have not requested.

Professional bodies have also been warned by their members of malpractice and abuse by some cold calling operators, particularly in the health insurance sector. As these methods are detrimental to the profession as a whole, they wanted to contribute to the development of cold calling best practices, which will allow prospects to give informed consent and which will lead to the generalisation of written agreement and an end to “single call sales”.

¹ The cooling-off period during which the right of withdrawal can be exercised is 14 days and 30 days for non-life and life insurance contracts, respectively, from the later of the date the contract is concluded or the date the pre-contract information is received.

Following this consultation process, the Committee adopted the following Opinion

A. Scope

The following proposals target cold calling by insurance distributors (insurers or insurance intermediaries), i.e. telephone calls that:

- are for commercial ends;
- target a consumer who is not a customer (hereinafter referred to as a “prospect”) and who has neither requested the call nor approached the distributor of the product in question.

For example, this definition covers telephone calls from a distributor to a prospect whose contact details come from a prospecting file acquired from a third party.

When prospects enter their telephone number on a comparison website during a request for prices, simulations or quotes, this is considered to be “approaching” a distributor if both of the following conditions are met.

- Prospects are informed in a clearly visible and unambiguous fashion when they complete an online form that if they give their telephone number they accept to be contacted to discuss the product concerned by the simulation.
- Prospects submit the comparison and/or quote request form on the comparison website.

B. The proposed sales process

In order to obtain the prospect’s free and informed consent at the moment of subscription, insurance distributors shall agree to comply with the following steps.

Pre-contract information

In compliance with the legal and regulatory requirements relative to distance selling of insurance transactions, during a “cold call” the distributor must explicitly state the following:

1. the distributor’s identity and, where applicable, relationship with the insurer;
2. the commercial nature of the call;
3. a review of the prospect’s demands and requirements;
4. the main characteristics of the recommended product, including guarantees;
5. the total premium amount and minimum contract duration;
6. the existence or absence of a right of withdrawal² and the terms and conditions for concluding the contract and particularly for expressing consent.

Once these details have been communicated, the distributor shall ask the consumer if he or she would like to continue the conversation. If the prospect does not give an affirmative response, the distributor shall immediately end the call.

At any time, the prospect may express his or her lack of interest in the offer being presented and thus terminate the call. In this case, the distributor shall not insist and shall not call back.

² The right of withdrawal does not apply to: (i) travel insurance, baggage cover or other similar short-term policies of less than one-month duration; (ii) insurance contracts mentioned in Article L. 211-1 of the French Insurance Code; and (iii) contracts concluded in full by both parties at the express request of the consumer before the consumer exercises a right of withdrawal.

If pre-contract information is sent by email, prior to sending and in accordance with Article L 111-10(I) of the French Insurance Code, the distributor must ensure that the email address, which must be provided by the prospect, is valid. The distributor shall ensure that the email has been received.

The distributor can only recontact the prospect by telephone if the prospect decides to arrange a telephone appointment. In this case, the appointment can only take place after the prospect receives the pre-contract information and has been given 24 hours to read it and, if necessary, compare it with contracts already held.

Any telephone call from the distributor subsequent to the initial cold call and in relation to the offer is only possible with the prospect's prior approval.

Expression of consent

Consent cannot be given during the cold call. In the event of a telephone appointment after a cold call, consent obtained verbally is unacceptable.

The prospect's consent must be expressed through active behaviour, and in writing, in accordance with the terms and conditions proposed.

The prospect's verbal communication of a code sent by the distributor by SMS does not constitute consent and does not represent a signature.

Active behaviour can only be evidenced in one of the following ways:

- the return of a signed paper-based draft contract³ or an electronic signature on the draft contract;
- a reply by email or via a communication system similar to email proposed by the insurance professional on a secure online platform specifically provided for this purpose, which unambiguously shows the prospect's consent.

After the subscription: the "welcome letter"

At the earliest opportunity, the insurance distributor shall send a "welcome letter" with, if necessary, the contract documents attached. This "welcome letter" sets out:

- the fact that the new client has engaged in the contract;
- the date the contract was concluded and when it comes into effect;
- the new client's right of withdrawal, the duration of the cooling-off period and its start date, the procedures for exercising the right of withdrawal, particularly the department to contact, and the policyholder's right to withdraw from the contract by email;
- the contact details of the distributor's complaints department⁴ for any sales disputes.

³ Or any other contractual document regardless of its title, draft contract, notice, estimate or special conditions.

⁴ For all other complaints, the consumer should refer to the contract documents.

C. Practices to be prohibited

In the course of their communications and for the conclusion of the contract, insurance distributors must not:

- create, in place and stead of the prospect, an email address so that the prospect can receive pre-contract and contract documents (while a secure platform may be created and made available to the prospect, its use must be at the prospect's initiative);
- present the right of withdrawal during the cooling-off period as an absence of engagement;
- call or call back prospects who have stated that they do not want to receive telephone calls that are commercial in nature; or
- make an offer to a prospect to subscribe to a contract for a risk already covered if the distributor has not ensured that the prospect can terminate his or her current contract at the same time as the contract proposed by the distributor.

Insurance professionals shall undertake to implement these best practices by the end of the first half of 2020 at the latest.

The CCSF will monitor progress and will conduct a review no later than one year after their implementation.