

Premium SMS EALA survey, February 2005:

Question: is it legal in your country to have "Premium SMS" in the promotions (Premium SMS = to enter promotion, participant pays more for sending his SMS and the income generated is shared by the operator and promoter).

Answers received:

Ireland:

Premium SMS promotions are commonplace in Ireland at present and we understand are LEGAL provided the cost of the SMS is displayed on the advertisement.

Turkey:

"Premium SMS" in the promotions is generally legal under Turkish Law unless the approval of the National Lottery Administration is not obtained.

Austria:

There is no specific regulation on this issue, therefore: DIFFICULT TO SAY.

Belgium:

illegal in Belgium

Croatia:

Thank you very much for your e-mail. Although we did not conduct any special legal research on the subject issue, our opinion would be that the proposed promotion has more changes to be considered legal than illegal. We base this opinion on our experience so far. We are not aware of any provision prohibiting such activity. Besides, there are other types of telecommunication services having a rate different from the regular one, so short message services could have special rates as well in some cases. A general recommendation that we would give in such case is that the special rate should be evident and clearly stated.

Spain:

Somewhere between (legal and illegal).

Finland:

Under Finnish law one may not promise a benefit based on chance in marketing, if this requires making a payment, purchasing the product or service or making a purchase offer. Hence participation in a promotion like a marketing lottery should be free of charge. (Regular mailing and phone costs are permissible, but additional charges benefiting the marketer may not be included.)

Luxembourg:

Difficult to say in Luxembourg. It would probably be necessary to see what the promotion would consist of and how the SMS's additional cost would be provided to the consumer.

Holland:

Premium SMS in Holland is legal. However a statement is required in the advertisement involving the costs for the consumer. Otherwise the adv is considered to be misleading. A new code of self-regulation (Gedragscode Promotiecode kansspellen) that will probably be effective as of August 2005 prohibits premium SMS if the costs of communication to be paid by the consumer will exceed the amount of € 0.50 .

United Kingdom:

Legal, provided that certain rules are followed.

Germany:

From my point of view: illegal, but it happens very often.

Sweden:

It would probably be necessary to see what the promotion would consist of and how the SMS's additional cost would be provided to the consumer.

Czech republic:

From lawyer's point of view: illegal, but it happens very often. The topic is just now being a matter of the public discussion.

Poland:

Although it is difficult to say in abstracto but it seems that such premium SMS in a promotion would be legal if the potential participant is informed in advance about the special price.