
FEDMA, the Federation of European Direct and Interactive Marketing, would like to share its view regarding draft report on “Towards a Digital Single Market Act”.

FEDMA stands for 22 national Direct Marketing Associations, directly representing more than 5,000 organisations, and for more than 50 organisations, representing all parts of the value chain in the data-driven marketing industry. Through its many activities, FEDMA is dedicated to building the business of cross-border data-driven marketing, both through its vast network of contacts and businesses within and beyond Europe and by representation within the institutions of the European Union.

The data-driven marketing industry uses personal information and data to effectively match customers’ needs with relevant brand offers. The data-driven marketing industry aims to create and maintain an individual and interactive relationship between businesses, institutions and their customers (both prospective and existing). The data-driven marketing industry allows retail businesses to target people with a personalised message, to generate sales both online and in store in a cost effective way to build long-lasting relationships with customers and raise brand awareness. It is an essential driving force of the EU economy and the EU Digital Single Market.

1. Unleashing the potential of Big Data is fundamental

FEDMA supports paragraphs 28 and 29 which highlight the potential benefits of Big Data and the need to prepare the EU to become a thriving data-driven economy.

“Emphasises the opportunities that new ICT technologies such as big data, cloud computing, the Internet of things and other data-driven technologies can offer to the economy and society, especially if integrated with other sectors such as energy, logistics, or health;

Calls on the Commission to carry out, with the public and private sector, a broad and transparent review on big data by March 2016, with the aim of anticipating the needs of big data technologies and addressing potential risks and challenges;”

2. Consumer trust is key

The biggest risk for the Data-Driven Marketing industry is to lose consumer trust. The Data-Driven Marketing industry has worked for decades and still works to sustain customer trust through
ethical data processing. Building trust is central to the future success of brands in all environments and essential to being able to maximise the word of mouth in the online networked world.

On the occasion of the European Data Protection Day, FEDMA together with Ms Anna-Maria Corazza Bildt, Member of the European Parliament, hosted an event on Data & Privacy: Striking the Right Balance. FEDMA launched its Charter on Ethical Data Management for the data-driven marketing industry, as a first step and a transitional tool between the current FEDMA codes, the review of the organisation's existing codes of conduct with the GDPR and the development of a dedicated self-regulatory programme. This demonstrates FEDMA’s commitment to respect individual’s privacy and data protection rights.

The forthcoming data protection legislative framework (the Data Protection Regulation and the revised Privacy in Electronic Communications (e-privacy) Directive) must balance the interests of organisations with the interests of consumers.

Any legislative steps towards a connected Digital Single Market must take account of such prerequisites. For a true Digital Single Market to be created, the data protection legislative framework must reflect a balance between the interests of organisations to use personal information and the need for consumers’ data protection and privacy rights to be protected. FEDMA believes that more work is needed to create a balanced text.

**Data Protection Regulation**

The data-driven marketing industry relies on personal information. Organisations must have flexible access to personal information and the ability to process it for marketing purposes, taking into consideration individuals’ data protection and privacy rights. Consent needs to be seen as just one of the legitimate grounds for processing personal information, rather than the most preferable one. All the legitimate grounds for processing personal information need to be given equal weight. Individuals want to receive relevant and targeted offers and promotions too. Access to personal information, as well as interactive communication with individuals are prerequisites for the growth of the European economy.

Regarding paragraph 32, FEDMA would like to highlight that the question of data ownership overlaps with the question of what/how the controller can process. What is absolutely relevant from a legal perspective, is the question of what the controller is legally allowed to process and how, which is currently discussed under the GDPR. We therefore consider that ownership issues are fully covered by the GDPR under the articles regarding the rights and obligations of the controller and processor.

(...) urges the Commission to clarify data ownership and data portability rules in accordance with the key principle that citizens should be in control of their data;

Regarding data portability, while supporting the concept of data portability, FEDMA remains concerned about the wider effects of the provision on sectors and business models beyond typical social networking have not been properly considered by both the European Parliament and Council.

We wish to stress that the imposition of one single format for the transfer of data would stifle innovation and become costly for businesses. Moreover, a ‘commonly used’ format leaves open
the potential for a less secure mechanism. If negotiators believe that the right to data portability should be extended to include the obligation for controllers to transmit data to another controller or third party it must be narrowed to cover only the data that the data subject actually needs in order to change providers. Due to the wide definition of personal data in the Regulation, we firmly believe that it is unlikely that a data subject would require a copy of all ‘personal data’ being processed in order to move to a different service. The right to data portability should not apply if disclosing personal data would infringe intellectual property rights in relation to the processing of those personal data, nor business confidentiality, and competition rights. The application of business of a small fee would be beneficial for the effectiveness of data portability.

3. Consumer rules for online purchase need coherency across channels and with Consumer Sales Directive

FEDMA was part of the European Commission working group on consumer rules and recently answered the Consultation (please click here for our response).

If the Commission aims for harmonisation, it should avoid a sectorial approach (online vs offline purchase, tangible vs intangible goods). The requirements for online and digital purchase should be aligned with shopping in the brick and mortar shops and purchase of tangible goods (Consumer Sales Directive). Multichannel reality must be taken into consideration and EU solutions must provide, as much as possible, for principle based consumer rules with exceptions where necessary relating to the nature of a specific service (e.g. digital content).

The European Commission should in our view make principle based recommendations to the Member States to help them extend the principles of the Consumer Sales Directive to intangible content. If the Commission makes a proposal covering harmonised EU rules for online purchases of digital content, this proposal should be targeted to the areas that seem to be problematic. Regarding the possible inclusion of “free contracts” in the scope of such a proposal, FEDMA considers that, in any case, to answer this question, the GDPR needs to be adopted. The GDPR covers the processing of personal data. To be future proof, consumer rules need to be based on the provisions of the GDPR. If identification of the data subject is possible according to GDPR, then the GDPR will apply. The GDPR provides a balance of interests between the interests of the industry and the consumer. Providing the consumer with a right to information, a right to object to the processing of data for marketing purposes and the right to be forgotten.

4. Geoblocking and contractual freedom: finding the right balance

FEDMA considers that it is important to focus on effective consumer choice. Effective consumer choice must be supported to a certain extent, where there is a balance between business and consumers. The contractual freedom must not deviate in a default obligation to supply in countries where the business has no presence. On the other hand consumers should be able to buy services and goods on the EU market. And buying in another member state could lead to justified reasons for different treatment or additional costs, but not to a standard denial of services. FEDMA would also like to make clear that outside the scope of DSM there are other
barriers to come to a Single Market which can only be addressed by public authorities: for example electronic waste disposal rules; different VAT rates, based on the country of residence of the customer. Geo differences are only one of the aspects to offer effective consumer choice.


Although not referred to in the draft report, the possible revisions of the “e-Privacy Directive” (Directive 2002/58) and the Audio Visual Media Services Directive 2010/13 could if the revisions were ambitious bring these Directives up to date and respond to the existing challenges. However, to achieve this goal, the revisions of both Directives must balance the interests of organisations to be able to market via e-mail, mobile connected TV and web based marketing channels while at the same time respecting individuals’ data protection and privacy rights. For the Audio Visual Media Services Directive, FEDMA promoted self-regulation. Indeed, the advertising and marketing industry has a pan European system of self-regulation. Through the European Advertising Standards Alliance (EASA), of which FEDMA is a member, EASA’s standards are enforced by national Self-Regulatory Organisations (SRO). These SROs enforce standards against fraudulent, deceptive and misleading advertising commercial practices at a national level, including in cross-border disputes.

We thank you for your consideration and remain available to answer further questions.

Best regards,

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