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FEDMA position paper on Consumer Protection Cooperation Network

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FEDMA supports the objective of the Digital Single Market to give better access to goods and services across Europe. FEDMA is fully supportive of the ambitious goals set out by President Juncker for the 2015 Commission. In line with President Juncker's statement "By creating a connected Digital Single Market, we can generate up to € 250 billion of additional growth in Europe in the course of the mandate of the next Commission, thereby creating hundreds of thousands of new jobs, notably for younger job-seekers, and a vibrant knowledge-based society", we believe that the European Union can strongly benefit from the development of the digital economy.

FEDMA stands for 22 national Direct Marketing Associations, directly representing more than 5 000 organisations, it also has more than 50 organisations as members, 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 industry aims to create and maintain an individual and interactive relationship between organisations, institutions and their customers (both prospective and existing). The industry allows organisations to target customers 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.

FEDMA supports better enforcement of the Consumer Acquis. We notably support non-judicial solutions on the basis of industry self-regulation and of ADR mechanism. However, FEDMA considers that enforcement measures are the competence of Member States. FEDMA therefore insists for article 8 of the proposal to be reviewed to reflect the principles of subsidiarity and proportionality, also to take better into account current national practices.

The importance of self-regulation

FEDMA supports better enforcement of the Consumer Acquis. We notably support non-judicial solutions on the basis of industry self-regulation and of ADR mechanism.

FEDMA considers that self-regulatory enforcement of unsolicited communications also sustains consumer trust. Direct Marketing Associations across the EU support the enforcement of the opt-in and opt-out rules for email and telephone marketing. Non respect of the Codes of Conduct can lead to termination of the membership to the DMA and in some countries, reporting to the authorities. In cross-border scenario, FEDMA encourages its DMAs to drive their members to respect other DMAs code of conduct, including their Preference Lists.

EASA, the European Standards Advertising Alliance, covers unfair and misleading commercial practices. FEDMA is a member of the European Advertising Standards Alliance whose standards are enforced by national Self-Regulatory Organisations (SROs). EASA currently has 25 SROs members in 23 EU Members States plus Turkey, Switzerland and 11 corresponding members from outside Europe. This far-reaching network enables the exchange of experience and information on handling complaints and cooperation on cross-border cases.

The European Commission adopted recently the [ADR Directive and the ODR Regulation](#). When consumers have **a problem with a trader** regarding a product or service they bought, they can settle their dispute out-of-court through an **Alternative Dispute Resolution** procedure. The ADR/ODR systems have just been implemented and need further time to gain in efficiency. The ADR system has the advantage of being a flexible, speedy and cheaper procedure than the judicial system. The ODR platform is only accessible since the 15th February 2016.

Our call for respect of subsidiarity and proportionality

FEDMA considers that enforcement measures and penalties are the competence of Member States in the field of unfair commercial practices (UCPD and MCAD), unsolicited communication (article 13 of the ePrivacy) and sales (Consumer Rights Directive). Indeed, European legislation in the field of the Consumer Acquis generally provides for the member states to provide for effective, proportionate and persuasive penalties and adequate and effective enforcement measures.

Regional legal cultures should be respected to avoid creating inconsistency or contradictions between the possible administrative, civil and criminal sanctions which can be taken either by the public or private enforcement entity. FEDMA would like to highlight that there are three different types of public enforcement regimes. There is a fourth enforcement culture; Germany and Austria rely on private enforcement. These different regimes correspond to regional legal cultures of Member States.

FEDMA considers that the right balance needs to be reached between the capacity of competent authorities to use their powers and the powers that they have. Indeed, enforcement measures require human and financial resources which many competent authorities may not benefit from. This extensive list of powers is moreover the minimum powers recommended for competent authorities. This means that proposal is disproportionate and will fail at full harmonisation, since member states may grant more power to their national competent authorities.



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FEDMA also considers that this proposal creates confusion between strictly national situations and cross-border cases. Indeed, all these powers would apply to competent authorities but only in cross-border situations. This entails that consumers may be confused at the fact that they will be receiving different protection depending on if the breach is national or cross-border. This may already be the case. However, the broad extent and the non-proportionate powers in article 8 of this proposal will only reinforce this difference. FEDMA fears that this proposal may push Member States to have to align the powers of national competent authorities not only at European level but also at national level. Respect of subsidiarity and legal cultures is important.

If harmonisation of enforcement measures were nevertheless to be adopted at European level, we recommend to focus on the enforcement measures which are the most applied at national level (where there is the most consensus). The majority of member states apply administrative sanctions to enforce the Consumer Acquis. For example, most member states grant the power to conduct mystery shopping and the power to make test purchases to their public or private enforcement entities. The right to name infringing traders is debatable since 5 countries including France and Germany which are two major national markets, do not grant this power to their authorities. The circumstances of the publication must be further defined. On the other hand, only 5 countries offer consumer compensation, only 11 countries offer their enforcement entities the power to take down websites/domains. No countries at all seem to order the restitution of profits obtained as a result of infringements. Only a few allow the freezing of assets and the suspension of trade activity.



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