



FEDERATION OF EUROPEAN DIRECT AND INTERACTIVE MARKETING

PUBLIC AFFAIRS & SELF-REGULATION

January 2017

## FEDMA position paper on Geoblocking

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 the development of a Digital Single Market. This is why, FEDMA calls on the European Institutions to reach the right balance in this proposal between consumer expectations, legislative requirements and logistics to ensure the freest movement of services and goods without hindering companies' business models. FEDMA congratulates the rapporteur on her efforts in the draft report to bring more legal clarity regarding the scope of application of the Geo-blocking Regulation and law applicable to a contract. FEDMA would like to highlight here a key point where balance must be further sustained.

Firstly, FEDMA supports the efforts of the rapporteur to provide further legal clarity. Indeed, where a trader indicates in a clear and comprehensible manner on his or her online interface or in his or



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her general conditions of access that he or she intends to sell to consumers from one or more Member States, the law applicable to a contract concluded with a consumer from a Member State not indicated by the trader and covered by this Regulation shall be the law of the trader. A trader need not ensure that the general conditions of access comply with the laws and regulations of the Member State of residence of a consumer to whom the trader does not intend to sell.

FEDMA supports Recital 15 which allows traders to operate different versions of their online interfaces, targeting customers from different Member States. This is very important for the advertising and marketing.

However, FEDMA is very concerned by the requirement of explicit consent for redirecting a customer from one version of the online interface to another as provided by the Commission proposal. FEDMA noted in the Council General Approach from November that explicit consent for rerouting is still requested but only for the first visit; Traders should not be under the obligation to require the customer's explicit consent each time the same customer visits the same online interface. This is already a step in the right direction. The requirement of provision of information as provided in the draft report is also a further step in the right direction to reach a better balance and ensure a pleasant consumer experience.

We are concerned that explicit consent will hamper the consumer's experience.

The risk is that the consumer may consult an interface which does not deliver in the country where he/she wishes delivery. However, according to the Consumer Rights Directive, the trader must inform the consumer on the countries where the trader does not deliver.

Furthermore, we draw your attention towards the risk of consumer fatigue. Indeed, consent must be required only where necessary. It is already provided for in other legislations (Consumer Rights Directive for payment, ePrivacy Directive for cookies, and General Data Protection Regulation as a legal basis, among others, for the processing of personal data). FEDMA considers that consent is not necessary for the rerouting and that information requirements provided under the CRD are sufficient.

Finally, in case consent is still considered necessary by legislators, we call on legislators to provide flexibility for traders. Consent does not need to be explicit but can be expressed through various affirmative actions and implicit solutions.