

FEDMA recommendations on the digital content proposal

FEDMA, the Federation of European data-driven marketing, represents the industry which helps suppliers of digital content and services reach out to potential customers and improve their services. We also make it easier for consumers to find the right suppliers. FEDMA has been active to share the marketing industry's hands-on experience and expertise, gained through active involvement with the GDPR.

Maximum harmonisation

The proposal aims at harmonising guarantees and remedies for the online purchase of digital content/services. The internet being global, maximum harmonisation is preferable.

Hierarchy of remedies

There should be a hierarchy of remedies as is currently the case in the Directive 1999/44 for the tangible goods; termination should be a last resort, e.g. if the trader cannot provide repair or replacement, otherwise the trader bears a too high financial risk.

No reference to "any other data"

If the proposal applies when any data is provided by the consumer in the context of the supply of digital content/services, then the scope of this proposal will be very broad and will likely heavily impact the way consumers interact with the internet of today. The cost of supply of digital content might actually increase for consumers, as suppliers may prefer to have consumers pay with money.

Furthermore, regarding "any other data", the GDPR applies exclusively to personal data, which is the data protected by our fundamental right. Therefore, this proposal should only apply to personal data.

- The proposal should apply to personal data only and not "any other data". FEDMA recommends to follow the definition of personal data in the GDPR and calls for deletion of the mention of "any other data".
- The GDPR and its principles apply to personal data only.

Better balance of interest for suppliers and consumers

Consumers can provide their personal data in the context of the offer of goods and services. Moreover, consumers understand better that disclosing personal data is part of modern life. In the UK, 52% now view their personal information as an asset to be used to negotiate better deals with brands, up from 40% in 2012. An entrepreneurial data mindset is apparent across the majority of consumers, with 80% claiming that personal data is their property and they should be able to trade it as they see fit¹. In the Netherlands, 67% of respondents think sharing personal data is part of modern life².

¹ UK DMA Study "What the Consumer really thinks", June 2015 https://dma.org.uk/uploads/ckeditor/Data-privacy-2015-what-consumers-really-thinks_final.pdf

² DDMA study, Data in Commerce, February 2017 <https://ddma.nl/onderzoek-en-publicaties/>



The GDPR will apply to the market of digital content including when there is no remuneration, providing data subjects with new and extended rights (e.g. right to erasure, right to object) which organisations are currently working on to implement. These new and extended rights provide the consumers with more information and rights on their data. Organisations are improving their privacy notices and data collection notices to raise consumer awareness on the collection and use of data and to inform them better about the benefits of their data.

Personal data cannot be a counter performance according to the EDPS opinion. This means there cannot be a contract: digital content/services versus personal data. Data cannot be considered as a means of payment. Nevertheless, from an economic point of view, the proposal needs to be further balanced so as to minimise the impact on suppliers who have to provide guarantees and remedies. Exchange of personal data may still be considered as a prior condition to guarantees and remedies.

- The proposal needs to be further balanced so as to minimise the impact on suppliers who have to provide guarantees and remedies.
- Exceptions should be maintained such as: “situations where the consumer is exposed to advertisements to gaining access to digital content/service”.
- There should equally be exceptions for situations where remedies and guarantees cannot apply or have limited advantages (e.g. internet searches. A consumer cannot expect guarantees and remedies following unsatisfying research results from a search engine).

Termination of the contract: alignment with the GDPR

The **right to retrieval and data portability under the GDPR** are very similarly worded, yet there are important differences. The right for consumers to ask for their data as provided in the text goes very much beyond that which consumers can retrieve under the right of data portability under the GDPR.

Suppliers, upon termination of the contract, are required to **refrain from using the counter performance** defined in the contract (i.e. delete or make it anonymous). FEDMA has considered that it is important to maintain consistency with the GDPR which already provides for data minimisation.

- This is why FEDMA supports referring to the GDPR for the processing and portability of personal data (in line with the opinion of the EDPS and of the Council discussions).

About FEDMA

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



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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.