

The need for legitimate interest

FEDMA would like to **remind the reader that legitimate interest is a legal basis which can be relied on for the processing of personal data for direct marketing purposes**. FEDMA agrees with what Commissioner Jourova said “The GDPR is based on common sense”¹. FEDMA and its DMA members are available to further discuss with authorities so we may continue to find the right balance between consumer and industry interests.

Consent and legitimate interest are equally valid legal bases for data processing². In article 6, the GDPR³ states the possible grounds for the processing of personal data. The six grounds have no hierarchical relationship between them. Consent is explicitly required by the GDPR for the processing of special categories of data, international data transfers and profiling with a legal or similarly significant effect. Therefore, for direct marketing purposes, organisations are free to choose between the use legitimate interest, respecting the conditions of necessity and balancing tests, or consent.

Moreover, the GDPR states in recital 47 that **direct marketing may be a valid legitimate interest**. In this case, the data subject is empowered by a right to object to processing of personal data for direct marketing purposes, distinct from withdrawal of consent⁴.

The Data Protection Network provides a number of examples of what could constitute a legitimate interest⁵:

- Direct Marketing : A charity sends a postal mailshot out to existing supporters providing an update on its activities and details of upcoming events.
- Personalisation: A travel company relies on consent for its marketing communications, but may rely on legitimate interests to justify analytics to inform its marketing strategy and to enable it to enhance and personalise the “consumer experience” it offers its customers.
- Updating customer details and preferences : A retail company uses an external service provider to verify the accuracy of customer data and create a better understanding of its customers. The company would need to carefully consider how it was conducting this and what the reasonable expectations of its customers would be.

FEDMA stands for 22 national Direct Marketing Associations, representing more than 5 000 organisations, and members, representing all parts of the value chain in the direct marketing industry. The direct marketing industry uses information and personal data to effectively match customers’ needs with relevant brand offers. The industry allows organisations to target customers (both prospective and existing) 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 European Commission: Keynote speech by Commissioner Jourová at General Data Protection Regulation conference 25th May 2018 http://europa.eu/rapid/press-release_STATEMENT-18-3949_en.htm

² As confirmed by WP29 in WP 217 Opinion 6/2014 844/14/EN (the opinion remains relevant for GDPR which did not change)

³ General Data Protection Regulation

⁴ In article 21 GDPR, distinct from the right to withdraw consent provided in article 7§2.

⁵ Data Protection Network: DPN Legitimate interest guidance – GDPR <https://www.dpnetwork.org.uk/dpn-legitimate-interests-guidance/>