



## Recommendations from FEDMA on New Deal for Consumer- EU consumer protection rules: enforcement and modernisation

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.

FEDMA is providing the following voting recommendations to improve enforcement of consumer law without overlapping or contradicting other legislations and with respect to the targeted approach of the Commission (i.e. without reopening the UCPD blacklist).

- **Respecting the structure of the UCPD and the Commission's targeted approach**

It is problematic, if all infringements of the UCPD automatically give consumers contractual rights to remedies, especially considering that the minimum remedy proposed is termination of the contract.

***Contractual rights to remedies must follow the well-established principles inherent in the contract law of Member States. The same goes for non-contractual remedies, where the right to compensation must follow the well-established principles within tort-law.***

The Unfair Commercial Practices Directive has a blacklist which forbids certain practices in all circumstances. This legislation and list was considered as fit for purpose by the Commission on their report. Practices not on the list can still be judged as unfair or aggressive by authorities and courts on a case by case basis if the economic behaviour of the consumer was distorted (he made a choice he would not have made otherwise.) Moreover, Recital 7 of the UCPD refers to the possibility of bans by member states on the grounds of taste and decency. FEDMA considers that these measures already appropriately protect consumers against unfair and aggressive practices (as provided in Commission fitness check report).

***We support deletion of the flexibility clause to respect the structure of the UCPD. In any case, any article providing flexibility to the member states to provide for bans on certain aggressive and persistent practices for off-premises contracts must be aligned with recital 44, and the intention of the European Commission proposal to be specific and targeted to certain off-premises practices; i.e. unsolicited visits by the trader to a consumer's home and commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers.***



***For example;*** This Directive does not prevent Member States from adopting provisions to protect the legitimate interests of consumers with regard to specific marketing or selling practices that are identified as aggressive or misleading in the context of ***unsolicited visits*** by a trader to a consumer's home, or with regard to commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers, provided that such provisions are proportionate, non-discriminatory and justified by overriding reasons in the public interest.

- **Help to avoid overlaps and contradictions with other proposals or legislations**

***Member states must have the choice as to where they decide to allocate the fines. We therefore support wording which reflects this choice, for example 'member states may or could allocate...'***

FEDMA supports a balanced approach regarding the level of detail provided to the consumer on the ranking of offers so as to avoid risking overburdening the consumer with information and respecting trade secrets (e.g. algorithm).

***We support wording in the articles (not only recital) which provides that 'the provision of main parameters of the ranking of offers should be done without any prejudice to trade secrets'.***

The Commission has published a platform to business proposal which aims ensure a fair, transparent and predictable environment for smaller business and online platform. The omnibus proposal should avoid duplicating or enter in conflict with this platform proposal which is currently being discussed.

***We do not support including platform to business or business to business marketplace/intermediary. We support a targeted approach covering price comparison websites and online marketplace' where a service provider allows consumers to conclude online contracts with traders (B2C only).***

Regarding the extension of the consumer rights directive to free online services, we do not see enough evidence of consumer detriment, which can justify reopening the Consumer Rights Directive. FEDMA still considers this part of the proposal as confusing for industry and consumers who are adapting to the GDPR.

We consider that at the minimum, there must be alignment on the General Data Protection Regulation and on the proposal to align on the outcome of the Digital Content Directive discussions. ***For example, by providing that the member states should exercise the powers set out in this directive in accordance with EU law and the GDPR.***