

FEDMA priorities 2019 - 2024

FEDMA objectives for the new European Parliament and European Commission

In today's modern world, advertisement is a part of daily life, as expressed on public transportations, TV and radio, in newspapers and in different social medias. Direct Marketing allows for targeted and personalised advertisements that are relevant to individuals. People will be exposed to advertisement every day, but they are more likely to be interested and enjoy marketing that relates to them and about products/services they have an interest in. Direct marketing allows for the development of a personalised exchange between individuals and marketers. The user's trust in the responsible behaviour of the marketer is the foundation of this relationship. Additionally, through its targeted approach, direct marketing also cuts down on waste and allows brands to allocate resources more efficiently.

In this context, FEDMA defends a **thriving environment for marketers powered by user's trust**.

I. Calling for a fair and efficient GDPR implementation

- **GDPR & European Commission 2020 GDPR implementation report**
- **EPDB and DPA public consultations & guidelines**
- **European Commission expert group on GDPR**

1. A **structured dialogue** between civil society, on the one hand, and on the other, key institutions such as Data Protection Authorities at national level, the European Data Protection Board and Supervisor and the European Commission should be strengthened.

Such dialogue should be constant with long-term objectives, ensuring that all relevant parties can contribute efficiently to the interpreting work of the GDPR in an inclusive way. This should translate into actual and effective consultations, both at national and European level, of the different industry experts and practitioners prior to the development of interpretations guidelines, including when new issues and challenges (such as new technologies and their data protection impact) are concerned.

2. A **harmonized and balanced interpretation** of the GDPR is needed to avoid as much as possible legal fragmentation. Providing one single legislation on data protection for the European Union was the key target of the European Commission when drafting the GDPR. A uniform interpretation needs to become a reality. *"We must avoid fragmentation and temptation for adding additional conditions or expansive interpretation for the GDPR. The*

Commission will not tolerate the so-called ‘gold plating’¹ confirmed Commissioner Jourová.

In addition, the GDPR, as adopted by the legislator, is a flexible legislation, based on accountability. While strengthening individual’s rights, the GDPR offers a framework allowing free movement of data² and innovation. Its interpretation and implementation should maintain this balance of interests and avoid any gold plating as referred to by the European Commission.

3. Self-regulation and co regulation are useful tools to help contribute to harmonisation of data protection legislations and to GDPR implementation for specific sector of the industry. The development of tools, such as Code of Conducts should be strongly supported by regulators and the European Commission, and their added value for the industry emphasized. Additionally, self-regulation is a flexible solution to keep up with the fast pace of innovation. The approval process with regulators for both union and national code should be facilitated.

In addition, the Community of Practice (CoP) for better self and co regulation (SRCR)³, initiated back in 2014 by the European Commission, which developed guidance to help making voluntary actions more effective, should be reactivated. The CoP’s expertise in self and co-regulation would greatly contribute to the development of SRCR in the field of data protection and could support regulators in the process of approving codes of conduct.

II. Driving online user’s trust and communications

- [ePrivacy Regulation Proposal](#)
- **Digital Services Act & eCommerce Directive review**
- [European action plan on disinformation](#)
- [European Commission Ethics Guidelines for Trustworthy Artificial Intelligence](#)
- [European Commission online platforms initiatives- Algorithmic transparency](#)

¹ Speech from Commissioner Jourová on the 13th June 2019, at the European Commission “The General Data Protection Regulation one year on: Taking stock in the EU and beyond” event:

http://europa.eu/rapid/press-release_SPEECH-19-2999_en.htm

² GDPR article 1 and recital 10

³ <https://ec.europa.eu/digital-single-market/en/community-practice-better-self-and-co-regulation-cop>

1. Defining a **workable and balanced legal framework of the online world** for all.

The design of the ongoing ePrivacy Regulation proposal should be reassessed in light of the realities of the implementation of the GDPR both from an industry and from a user online experience perspective. In addition, the text in its current form (version May 2019) needs reassessment to avoid impacting innovation, new technologies and competition. Following the example of the GDPR, the legislator should maintain a principle-based approach to the online environment, including a risk-based approach, providing users with transparency and control over their privacy while avoiding a consent centric approach.

Similarly, the potential review of the eCommerce Directive should produce a balanced and principle-based legal framework, driving consumer trust while leveraging ecommerce full potential within the Digital Single Market.

2. **Self-Regulation is instrumental in developing and sustaining user's trust** in the digital world and regarding electronic communication. Prior to legislating, policy alternatives must be taken into consideration, such as non-regulatory ones (self and co regulation) as recommended by the European Commission in its Better Regulation guidelines on impact assessment.⁴

Self-regulatory programmes and best practice contribute in a positive way to generating user's trust at national level, through various codes on direct marketing, email marketing (including guidance and examples on how consent can be collected for email marketing), for telemarketing (16 Robinson lists dealing with B2C telemarketing have been developed in Europe, mostly in countries which enable telemarketing on an opt out basis) and for Online Behavioural Advertising with the Pan European Self-Regulatory programme on OBA (offering information, control for user over OBA)⁵.

3. Maintaining the ability to **provide algorithm-based personalised services and offers while ensuring consumer's protection**. The use of algorithms to provide personalised services, including personalised prices, is intrinsic to ecommerce. Users and consumers already benefit from rights regarding automated decision making thanks to the GDPR and

⁴ <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-impact-assessment.pdf>

⁵ According to the [European Advertising Consumer research report 2017](#), having had the opportunity to click on the OBA Icon and having the opportunity to manage their privacy preferences, more than 2 in 5 respondents (44%) across the 15 countries surveyed report being more favourable about the concept of OBA: <https://www.edaa.eu/truste-edaa-research-shows-digital-advertising-self-regulatory-programme-continues-to-improve-consumer-attitudes-towards-interest-based-advertising/>

the recently adopted Digital Content Directive, notably the right to be informed about the use of such practices. The development of Artificial intelligence and the use of algorithms, as well as their impact on users are being monitored by the European Commission. While consumers should be protected from unfair decisions, it is important to maintain a legislative environment in which technology development and its added value for society can thrive.

4. Tackling online disinformation while ensuring ad supported online content and quality journalism. The spread of online disinformation is a major challenge for Europe. It erodes trust in institutions and in digital and traditional media and harms democracies by hampering the ability of citizens to take informed decisions. In addition, it causes reputational concerns to the digital advertising value chain since online advertising is the main source of revenue for the diverse media landscape in Europe.

III. Fair Digital Ecosystem

- [European Commission initiatives for building a data economy](#)
- [Shaping competition policy in the era of digitization](#)

1. Ensuring a fair market place through a **coherent EU approach to the digital ecosystem from the angle of competition policy, data concentration and data protection**. New digital related legislation should take into consideration potential impacts they may have on the European digital ecosystem as a market place, including in incentivising data concentrations and encouraging walled garden. The preservation of a diverse European digital ecosystem should be a priority, while encouraging global developments.

3. **Recognising the value of data and its importance for the economy**. Along the work on data protection and privacy, the economic and societal value of data should be strengthened, by encouraging innovation, and also by recognising the role of data in the ad-funded online business model, which enables user to access online content.

IV. Creating a coherent environment for our industry

- [Digital contracts rules](#)
- [New deal for consumer](#)

More coherence between different areas of the law and their enforcement, including between consumer law and other legislative frameworks is needed. There is a tendency to recognise consumer rights in various business models, including services or products not paid in money but by the provision of personal data. Consumer law should be made coherent with other area of the law, such as data protection and privacy legal frameworks. Law makers should avoid overlaps, legal complexities or potential contradiction with data protection and privacy law. The effects of the GDPR are still being discovered by individuals. Legal complexities are particularly challenging for SMEs, for example the overlap of the current proposal for representative actions within the New Deal for Consumers and the GDPR which provides for member states to legislate on representative actions.

Similarly, the EDPS clearinghouse⁶ which gather authorities with regulatory responsibilities for various aspects of the digitised economy, aims at **assessing overlaps between different legislations by strengthening coordination among them**. However, we need to avoid complexities in the enforcement of the law; for example, the risk that the GDPR might be enforced and interpreted by consumer and competition authorities. If the application of consumer or competition law requires prior assessment of whether there is a breach or not of the GDPR, then consumer and competition authorities should refer to the Data Protection Authorities, designated under the GDPR, as the rightful authorities to enforce the GDPR.

⁶ https://edps.europa.eu/data-protection/our-work/subjects/big-data-digital-clearinghouse_en