



Proposal on representative actions for the protection of the collective interests of consumers

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 defends a thriving environment for marketers powered by user's trust. In this context, FEDMA supports an approach which ensures coherence with other legal frameworks by avoiding contradictions and which avoids impacting non-judicial solutions. The industry needs clarity to be able to pursue self-regulatory efforts, for example for Codes of Conduct under the GDPR. Therefore, FEDMA would like to put forward the following suggestions to recognize the specificity of Union law applicable to the protection of personal data.

Avoiding impact on non-judicial solutions, including Codes of Conduct under the GDPR

Effective implementation of law requires a balanced approach between self-regulatory systems, administrative and judicial systems; injunctions (to stop infringements) and redress actions (enabling consumers to obtain repair and compensation for their damages). This balance is particularly important for recognised self-regulation, especially in the context of defense of fundamental rights, which is the case for Codes of Conduct under the GDPR. FEDMA also supports advertising self-regulation. EASA, the European Standards Advertising Alliance, covers unfair and misleading commercial practices.

Avoiding impact on international data transfers

International data transfers under the GDPR require safeguards which can be ensured, among others, by standard contract clauses or adequacy decisions. In the context of the Schrems complaint, the Court of Justice is currently assessing the validity of the Privacy Shield and standard contract clauses. This means that two types of widely used safeguards for data transfers to the USA are under jeopardy. In parallel, the UK may leave the EU without an adequacy decision. Other options to ensure safe data transfers are Codes of Conduct under the GDPR. However, these Codes



of Conducts will only be considered by the industry if self-regulation as a whole is positively viewed. This is why, we need to ensure that this proposal does cast a shadow on Codes of Conduct under the GDPR.

Avoiding contradiction and confusion with GDPR and DPA powers

The proposal provides for availability of collective injunction and redress actions for the GDPR and the ePrivacy legislation (a directive today and a regulation in the near future). FEDMA struggles to understand how this proposal (a directive) can co-exist with GDPR and the future ePrivacy (regulations). This proposal should therefore not impact DPA powers due to the specificity of this sector and the importance to ensure consistent application of the GDPR (for example; article 51 of the GDPR provides that member states must provide for competent Data Protection Authorities (who must contribute to the consistent application of the GDPR) and for member states (who have several DPAs) to set the mechanism to ensure compliance by the other authorities for consistency of the GDPR).

FEDMA recommends (a) supporting self-regulation and (b) ensuring coherence with other legal frameworks by respecting their specificity:

- We recommend adding the same wording as in the CPC Regulation ***"This Directive is without prejudice to relevant Union law applicable to the protection of individuals with regard to the processing of personal data."***
- We recommend adding that: ***"This Directive will not apply to minor infringements as provided in sector specific Union law"***.
- We recommend adding that ***"Priority should be given to the resolution of cases through out-of-court procedures, especially recognized sector specific out-of-court mechanisms, or Alternative Dispute Resolution mechanism. Traders which are willing to act in good faith and to proactively resolve disputes should be provided the opportunity to do so. Legal proceedings should remain a last-resort solution."***
- We recommend adding that ***Member states when laying down rules for the coordination between representative actions, should take into account self-regulation.***