



## **FEDMA calls for industry support because brands' capacity to reach out to customers and prospects is being challenged.**

### **What happened?**

- A fair and balanced processing of data for sponsoring is heavily fined.  
The Tennis Association in the Netherlands (non-for-profit) forwarded their members' names, gender, postal addresses to a sponsor so as the sponsor may promote its products or services to the members (some were tennis related, others not) by postal mail. The association equally shared the same data with, in addition, the data of birth, to another sponsor for telemarketing. The telemarketing campaign was cancelled, and the direct mail campaign continued. On March 3, the Dutch Data Protection Authority published their decision to fine the Dutch Tennis Federation €525.000.

### **Why is this special?**

A new approach is taken by the Dutch DPA regarding the legal grounds of:

- Further processing of personal data  
For the members who joined the tennis association prior to 2007, they were informed that the data collected was for the purpose of fulfilling the membership agreement. To share the data with the sponsor, the Tennis Association demonstrated that the purpose of generating revenue through sponsoring was compatible with the original purpose of fulfilling the membership agreement. The Authority stated that the Federation had broken the rules of the GDPR as the use was incompatible with original gathering of those data. Consent was necessary.
- Processing of personal data on the grounds of legitimate interest  
The Dutch Tennis Federation has always used legitimate interest as the legal basis for the transferring of the personal data to its sponsors. Now, the Data Protection Authority, in its decision, states that the Tennis Federation, even though they had informed the membership and given the members the chance to opt-out, needed a consent from each member in order to transfer the data to the sponsors.

### **Why should you be concerned?**

- This decision is a threat to the whole infrastructure of prospecting for new customers, for all of Europe's Businesses, including first parties (e.g. brands, retailers, associations) and third parties (e.g. sponsors, list brokers).
- If unchallenged, all prospecting activities would have to be based on a consent from the individual. For this consent to be valid, the requirements are: informing of the name of the prospecting company to the individual prior to the collection of the consent, separate consent from terms and condition and, most likely, one consent for each individual company.
- Such a national precedent could lead to a European precedent because GDPR is a regulation which should be interpreted in the same way all over the Internal Market.
- This would be a major issue for small and medium sized business, especially in niche markets. The well-known ones could all also face problems for example, higher advertising costs.
- Alternatives would be mass advertising (e.g. billboards) or targeted online communications through "walled gardens" operated by large digital intermediaries very likely leading to concentration of data and uncompetitive markets.

### **What we need now is for the whole industry to act! We call for synergies to ensure:**

- Political pressure towards the European Commission for them to clarify that legitimate interest can, and should, be used for promotional activities so that the European Businesses can develop and thrive.
- Political pressure in all member states to ensure that companies can continue to promote their services to individuals as long as they respect the wishes of the individual.
- Support for the court cases challenging the decision in the Netherlands.

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