



Brussels, 09/03/2021

FEDMA answer to MEP Voss call for input on GDPR implementation

FEDMA is a member of the European Commission expert group on the implementation of the GDPR and is currently updating its Code of conduct on processing of personal data for direct marketing purposes. FEDMA defends a thriving environment for marketers powered by user's trust and, in particular, we call for a fair and efficient GDPR implementation. This implies a structured dialogue between civil society and key institutions, a harmonised and balanced interpretation of the GDPR and Codes of Conducts as useful tools to contribute GDPR implementation. In line with our [2019-2024 priorities](#), FEDMA would like thank MEP Voss for this opportunity. We would like to highlight some key concerns regarding the GDPR. In annex, we have indicated our voting recommendations on Parliament resolution 2020/2717. We are available to discuss the implementation of the GDPR in a broader context.

3 Key concerns:

The main issue experienced currently by FEDMA members is the **risk of gold plating and fragmentation in interpretations of the GDPR**.

Also, **interpretation of the GDPR should be balanced**, particularly on data subject access rights and legitimate interest, between data protection and free movement of personal data.

Finally, FEDMA calls for **continuous support for Codes of Conduct**.

In more details:

- **GDPR did not generate cost savings**
Data marketing sector has not experienced cost savings. Fear of massive fines and complexity of the GDPR weigh on data processing. The administrative burden has risen. In addition, we have in all countries opening clauses or derogations so that harmonisation is only partial.
- **No Harmonized Understanding of GDPR**
The harmonization which was promised (that every data protection case will be judged the same within the EU) has not come true. Each DPA in each member state follows its own rules.
- **Business unfriendly understanding of the GDPR**
Although the wording of GDPR (art. 6 1 f GDPR compared to art. 7 f data protection directive) is very similar and although GDPR is basically more promotion-friendly as Recital 47 privileges direct marketing, we see that there is a significant move to business unfriendly understanding of GDPR, especially recital 47 and legitimate interest. For more



information, we refer you to [FEDMA article legitimate interest](#) which made the cover of the Privacy Laws and Business journal.

- **Free movement of personal data plays no significant role**
Although the free movement of personal data (freedom of information) is mentioned in art. 1 § 3 GDPR and in recital 4, equal to the protection of data subjects, we do not see such a balance in the day-to-day implementation of the GDPR.
 - **Consent:** Getting valid consent under GDPR is very challenging. A link between an incentive given to the consumer in return for its consent puts the consent as such under the risk of being invalid according to the understanding of the European Data Protection Board.
 - **Consent and legitimate interest have equal value.** This does not mean however that legitimate interest cannot be done following a legitimate interest assessment.
 - **Information Requirements:** Art. 13 and 14 are very detailed. Implementation of the GDPR must enable layering of information, user friendly privacy notices and other techniques to focus on the really relevant information to sustain consumer trust and interest in reading privacy notices.
 - **Data Subject Rights:** Data Subject Rights are very extensive and their interpretation should be balanced. For example, exclude from the right to access the information that the data subject had already previously received. FEDMA developed a position paper on Data Subject Rights for the EDPB that we are happy to discuss.
- **Allow relevant marketing**
If according to recital 47 direct marketing is privileged, it needs to be clear that this includes the possibility to store and process information on the relevant consumer likes and dislikes, with regard to the respective business. European SMEs need information on the likes or dislikes linked to the products or services they are designing and marketing. Therefore, they do not need to get 360° profiles of each individual. FEDMA developed several position paper on legitimate interest that we are happy to discuss. FEDMA supports risk based solutions such as pseudonymization.

For the reasons above, we recommend the following:

- **We support the GDPR; its principle and risk-based approach.**
 - **ePrivacy:** In the context of the discussion on the resolution on GDPR implementation in LIBE, we take note of your call for a targeted revision of the GDPR, with a new ePrivacy chapter. FEDMA does not support reopening the GDPR, unless this would be in the context of a possible repeal of the ePrivacy proposal, leading to the opening in the context of ePrivacy to the use of all legal basis.
- **Structured dialogues are essential and must be encouraged.**
 - Such dialogue must be constant with long-term objectives so as to drive data protection as a competitive advantage. It facilitates creation of tools, such as



sandboxes, which provide businesses with support and innovative solutions or adoption of Codes of Conduct.

- Dialogues between authorities (DPA1 and EDPB2) also reflects the dual nature of the GDPR; a harmonisation tool with some elements of a choice for member states.
- **The development of Codes of Conduct should be strongly supported by each EU institution.**
 - Codes of Conduct are one of those tools which enables rules to consistently be applied in all member states. Codes will relieve the DPAs of some of the burden of providing detailed guidance to businesses and enable them to focus on the principles of the GDPR. Codes enable cost-efficient implementation of the GDPR for the DPAs.
- **Accountability is a core notion of the GDPR. More efforts are needed to reach a balanced interpretation of the GDPR.**
 - A balanced interpretation of data protection for the data subjects and free movement of personal data especially on: data subject rights and processing of data for profiling with the purpose of direct marketing.
 - We also call to avoid as much as possible legal fragmentation or gold plating.
 - In general, derogations should be avoided. This Regulation with so many derogations is complex for businesses and individuals.
- **It is very important to avoid overlaps or contradictions between the GDPR and other legislations.**
 - SMEs need to process personal data to offer products and services. A clear and consistent interpretation of the GDPR, by DPAs, is essential to avoid legal uncertainty for SMEs. Inserting data protection in other policies threatens an EU harmonized data culture driven by DPAs and EDPB, as other sector specific authorities may try to interpret to the GDPR. It is essential to maintain a healthy balance between judicial and non-judicial solutions and to avoid impacting the GDPR or creating confusion on the role of Data Protection Authorities.
- **FEDMA supports SCC and adequacy decisions as tools to ensure safeguard for personal data transfers to third countries.**
 - In the context of Brexit, we support an adequacy decision. FEDMA supports the tools of standard contract clauses. FEDMA provided feedback directly to the Commission expert group on this topic., We also call for clarification as to how Codes of Conduct may be used to ensure safeguards for international transfers.

¹ Data Protection Authorities

² European Data Protection Board