



FEDERATION OF EUROPEAN DIRECT AND INTERACTIVE MARKETING

PUBLIC AFFAIRS & SELF-REGULATION

22 September 2011

To

Mr. Jacob Kohnstamm  
Chairman of the Article 29 Working Party

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Dear Mr. Kohnstamm,  
Dear members of the Article 29 Working Party,

By letter dated the 3<sup>rd</sup> of August, FEDMA expressed her concern regarding the implementation of the Online Annex to the FEDMA Code in the Netherlands. The current application of the definition of consent by the Dutch Telecoms Supervising Authority (OPTA) in recent cases and decisions, is not in line with the provisions of the Online Annex to the FEDMA Code, which is approved by the Article 29 WP on 13 July 2010.

In reply to our concerns you informed us by letter on August 12 that you discussed this matter with the Dutch Telecoms Authority, for which we are very grateful. In your reply it is stated that you trust that OPTA will correctly take into account the opinion of the Article 29 Working Party in its 'Vision on Telemarketing' which would be published within weeks.

FEDMA recently received a copy of this 'Vision' and has read it with great interest. In its 'Vision on Telemarketing' OPTA explains how it applies the consent principle for telemarketing, stating that telemarketing is unsolicited even when it is based on consent. This interpretation is also of great concern to us, but it's not the reason why we approached the Article 29 Working Party.

With regard to the implementation of the FEDMA Online Annex, it is not telemarketing that worries us, it is the concept of consent for e-mail. Despite the efforts of the Working Party, this concern remains. OPTA's interpretation/explanation of 'consent' for *e-mail* is not in line with the provisions of the Online Annex to the FEDMA Code.

FEDMA therefore still desires to discuss this situation with the Working Party. In our opinion it is counterproductive and inefficient to create codes of conduct at European level and get these approved by the Article 29 Working Party, when individual Supervisory Authorities in Member States apply these principles contrary to what is agreed upon by the industry and the Article 29 Working Party.

Because of the urgent nature of this matter, FEDMA representatives are more than willing to visit your office in the Netherlands to explain the nature and effects of these differences in view points between OPTA and the Working Party.

Yours sincerely,

Dieter Weng  
Chairman of FEDMA