



FEDERATION OF EUROPEAN DIRECT AND INTERACTIVE MARKETING

PUBLIC AFFAIRS & SELF-REGULATION

09 September 2011

To:

Ms. Marie-Helene Boulanger, Head of Unit
Mr. Jose Manuel De Frutos Gomez, Policy Officer
European Commission
DG Justice
Directorate C - Unit C3

Dear Ms. Boulanger,
Dear Mr. De Frutos Gomez,

Within the context of the drafting of the legislative proposal for the review of the Directive 95/46/EC on Data Protection, FEDMA would like to inform the European Commission of some of our concerns, in particular regarding the activity of profiling.

November 2010 the Council of Europe accepted a recommendation on profiling. FEDMA provided the Council input with regard to the use of profiling in business activities. The Council rightfully outlines the dangers of *unfair profiling*, where the legal effects significantly influence the everyday life of the data subject, for example when sensitive data or children's data is processed for profiling purposes or profiling data is used for price discrimination. FEDMA agrees with the Council that the current safeguards offered by the 95/46/EC Directive on Data Protection and the 2005/29/EC Directive on Unfair Commercial Practices should be maintained and enforced to protect the data subject from unfair profiling.

However, FEDMA would like to stress to the Commission that in the current information society profiling is a fundamental part of commercial, ideal and charitable business processes and is essential for the functioning of the internal market. Legitimate profiling is not a harmful activity, but an instrument used by organizations in every market segment, profit or not for profit, in pursuit of a legitimate business interest. Commercial, ideal and charitable organisations identify target audiences to make sure they communicate with data subjects that are likely to be interested in their products or services. This helps prevent waste and consumer irritation when receiving a irrelevant marketing communication. Profiling is also used to identify loyal customers and provide them with relevant information, special promotions and discounts (loyalty programmes). Financials have to profile their potential customers with regard to their duty of care, for example by checking their insurance or bank credits to see if they can afford a loan. Public transportation, theatres and cinema's provide elderly and student discounts. Governmental organizations profile citizens to see if they are eligible for social benefits or higher taxes.

The examples show that profiling is everyday business for our European society. Legitimate profiling does not produce negative (legal) effects for the data subject. Moreover, consumers and voters alike can appreciate the fact that they are recognized by organizations or political parties and experience benefits for their loyalty. FEDMA asks the Commission to consider the benefits of profiling while drafting the Directive. Profiling is a legitimate business interest and should be recognized as such by legislation.

Please do not hesitate to contact me in case you have any further questions or concerns.
Yours sincerely,

Dieter Weng
Chairman of FEDMA

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