



FEDERATION OF EUROPEAN DIRECT AND INTERACTIVE MARKETING

PUBLIC AFFAIRS & SELF-REGULATION

23 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,

As a follow-up to our previous letter, FEDMA would like now to share with the European Commission its views on the data breach notification concept.

First FEDMA believes, transparency on the processing of personal data is of the utmost importance. Transparency is created by informing the consumers on the purposes of processing, the identity of the controller and if personal data are used for commercial purposes, his/her right to block. The concept of 'data breach notification' should be welcomed as part of the transparency principle. If data subject can rely on controllers to have his/her personal data secured, the obligatory data breach notification would be a welcomed addition. Thus, FEDMA is very sympathetic to this concept, because it is an incentive to secure personal data.

FEDMA, however, is interested in the actual obligations which constitute a breach notification. What are the obligations? When is a data breach a relevant data breach for a notification to the data subject? Is there going to be a differentiation between organizations with a small database and a large database or are there any other criteria to be developed? Are there special obligations to be expected for certain industries? And are the obligations the same for industry as for the government? What are the obligations towards the data subjects?

FEDMA is concerned that an extensive horizontal breach notification would bring an important burden on businesses, as well as on Data Protection Authorities, which, for certain, would lack the resources to investigate, and on data subjects. Indeed, it is of importance to avoid over-notification which always bears the risk of confusing the data subject which would then ignore notification of real importance. In the opinion of FEDMA, there is a strong need for a definition of a threshold above which a data controller would need to notify the data subject. A notification should be obligatory in cases where an immediate action is required by the data subject, for example, in order to prevent identity theft or where disproportionate damage can be expected. It is also important, when such notifications are necessary that a harmonized data breach notification scheme be developed at European level as a means to simplify all parties' actions.

FEDMA considers that breach notification provides an added value to the transparency principle and can enhance data subject's trust in data controllers. However, several questions remain open for thorough analysis with stakeholders. Finally, in FEDMA's opinion, the definition of a threshold as mentioned above is of the interest of all, DPAs, Data subjects and businesses' interest.

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

Yours sincerely,

Dieter Weng
Chairman of FEDMA