

**49. Federation of European Direct Marketing (FEDMA). Code on e-commerce & interactive marketing.**

*Questo codice di autoregolamentazione è ripreso dal sito ufficiale della FEDMA: [www.fedma.org](http://www.fedma.org).*

FEDMA represents the Direct Marketing sector at the European level. It has in membership 12 national Direct Marketing Associations in the European Union, and also those of Switzerland, Hungary, Poland and the Czech and Slovak Republics. These associations in turn represent users, service providers and media/content providers of direct marketing. FEDMA also has about 400 direct company members. E-commerce and direct marketing are natural partners. As a communications strategy, direct marketing naturally and logically seeks to maximise the potential of the Internet and electronic commerce, as today's most rapidly expanding communications and financial transaction media. In this context, the aim of this Code of Conduct for Electronic Commerce is to contribute to the growth of an e-commerce environment conducive to online direct marketing and at the same time protective of consumer interests.

It is incumbent upon the business community itself to make the effort to create the trust and confidence needed in electronic commerce, thereby helping to minimize the need for excessive legal restrictions that could hamper future technical or business processes. Self-regulation for e-commerce offers an effective and dynamic alternative to detailed and static legislation.

The Code of Conduct constitutes a key element in FEDMA's wider «Ring of Confidence» initiative, the overall aim of which is to establish a comprehensive selfregulatory system for electronic commerce. The Ring of Confidence includes a Guarantee Seal, or trustmark to be granted to and displayed on the websites of associations and companies adhering to this Code of Conduct; a related consumer complaint resolution mechanism and links to online Alternative Dispute Resolution (ADR) Systems.

The Ring of Confidence also envisages encouraging software solutions to help protect consumers (e.g. privacy enhancing technologies), and authenticity /verification systems to ensure greater financial security and to verify e-commerce partners.

This code was adopted unanimously by the FEDMA Board at its meeting on 5 September 2000.

**FEDMA CODE ON E-COMMERCE & INTERACTIVE MARKETING**

*Introduction*

Federation of European Direct Marketing Within the broader aim as outlined in the Explanatory Memorandum, the Code of Conduct seeks to achieve a number of clear objectives:

To allow online direct marketers, by adhering to such good practice, to gain the trust and confidence of online consumers and thus increase business

To respond to the challenge laid down in the European Distance Selling and Ecommerce directives, that industries develop codes of conduct as enabling tools for legislation.<sup>1</sup>

To promote and raise the profile of Direct Marketing as an industry sector seeking to secure good business practices in electronic commerce

This Code applies only to online commercial relations between business and consumers.

This includes e-commerce and also covers Commercial Communications.

The code constitutes *a standard of ethical business conduct* to be followed by online marketers Selling goods or services Providing commercial information as part of, or follow-up to a sale (applicable both to product/service promotion through the web and/or through e-mail).<sup>2</sup>

The code's recommendations are based on FEDMA's interpretation and analysis of Relevant international Codes of Practice and Guidelines Legislative requirements Best practice in the field at national and regional levels. <sup>3</sup>

This code of conduct should be read in conjunction with other FEDMA Codes, in particular the Draft FEDMA Code of Practice for the use of Personal Data in Direct Marketing.

Together with this document, FEDMA hopes to create a coherent reference tool for effective self-regulation, to be used within the framework of applicable laws.

<sup>1</sup> In the directive on E-Commerce (2000/.../EC), article 16 states « *Member States and the Commission shall encourage the a) drawing up of codes of conduct at Community level, by trade,*

*professional and consumer associations and organisations, designed to contribute to the proper implementation of articles 5 to 15. »*

2 Hereafter referred to as « Marketers »

3 See Annex III : Legislative and Regulatory Basis of the Code

FEDMA in no way seeks to override or replace any mandatory provisions at national and/or European levels.

The Code shall be applied in full, unless FEDMA expressly states otherwise in any particular situation.

The Code contains provisions on the following:

Operational Transparency

Commercial Offers and Contractual Information

Commercial Communications

Transactional Security

Data Protection and Consumer Privacy

Redress Mechanism

Monitoring and Enforcement

Applicable Law

Annex on: Definitions of Terms Used in the Code

Legislative and Regulatory basis of the Code

Applicable Law

FEDMA hopes that the Code will gain acceptance by all companies engaged in online direct marketing practices as the Industry standard.

FEDMA is committed to a regular review of the provisions of this code. It is envisaged that the code will continue to evolve to reflect changes in the associated legislative and regulatory environments, and the impact of pertinent technological research and advances on the manner in which companies engage in online direct marketing practices.

The first review of the Code is due March 2001.

Federation of European Direct Marketing

### FEDMA CODE ON E-COMMERCE & INTERACTIVE MARKETING

#### 1. *Operational Transparency* .

1.1 All information provided by the marketer must be clear, legal, decent, honest and truthful

1.2 Marketers should provide the following permanent information on their websites:

Correct legal name, and any other name(s) or number used to identify the company/service in a trade register or otherwise.

Correct contact details for the offline and online environments. These should include :

The permanent physical, postal address.

A central company e-mail address

An e-mail contact to allow the customer to access the following :

Any claim to an after-sales service

Any request for suppression of data in marketing lists

Any customer enquiries/any other customer service offered by the company

#### 2. *Commercial offers and contractual information*

##### 2.1 *Contents of an Offer*

2.1.1 The terms of any offer should be clear, with the company and the consumer's mutual commitments in terms of both sale and supply unequivocally stated.

2.1.2 Prior to the conclusion of a contract, marketers should provide consumers with at least the essential points of the offer in a saveable and/or printable medium, allowing consumers to take due account of all factors likely to affect their decision and to affirm their consent to purchase.

2.1.3 This essential information should include: the identity, permanent address and other relevant contact details of the company, in such a way that the company is clearly identifiable; the main characteristics of the goods and services proposed, in qualitative and quantitative terms; the financial terms : the price, which will be charged by the company to the consumer, including, where possible, all taxes<sup>4</sup>, and any additional costs; the general terms of the offer and the restrictions, if any; where applicable, the period for which the proposal is valid the arrangements for delivery; the existence of and conditions for exercising the right of withdrawal and for reimbursement; the conditions for cancellation of the contract, where it is of unspecified duration or of a duration exceeding one year; a destination address and contact number for the handling of customer enquiries; information on guarantees and after-sales

service;

2.1.4 In the case of contracts to be performed permanently or recurrently, the minimum duration of the contract should also be given.

2.1.5 Where appropriate, a choice of payment method should be offered.

### 2.2 *Conclusion of a Contract*

2.2.1 The Marketer should clearly explain the steps to be followed by the consumer in order for a contract to be concluded.

4 FEDMA recognises that providing details of sales tax and any relevant customs depends on the consistent treatment of on-line sales by the national tax/customs authorities.

Marketers should in any case warn customers of possible taxes; and, in the case of specific certain types of product, the possibility of import restrictions.

2.2.2 A contract is considered concluded when the marketer receives confirmation from the consumer of his/her order. Marketers are encouraged to acknowledge receipt of this confirmation.

2.2.3 The consumer should receive confirmation of his/her order in a saveable and/or printable form, in good time during the performance of the contract, and, at the very latest, at the moment of delivery. This confirmation should take the form of a clear statement or summary of the order details, to include the following: What exactly was ordered;

The date of the order;

The price agreed at the time of the contract conclusion, and any other charges;

The delivery details as agreed at the time of conclusion of the contract;

A contact within the marketer's organisation;

An order reference;

### 2.3 *Fulfilment of a contract*

2.3.1 The marketer should make every effort to ensure that the contents of the contract are followed through to the satisfaction of the consumer.

2.3.2 The delivery period is set by default within 30 days of the date from receipt of the order, unless the marketer proposes an alternative time period with the agreement of the consumer. The marketer should inform the consumer of any failure to dispatch products ordered within the default or the specified delivery time stated in the proposal. A new date and time of delivery should be specified.

2.3.3 During the delivery period, the consumer should be able to cancel his order and obtain reimbursement, if payment has already taken place<sup>5</sup>. This is valid up to a maximum of 30 days following receipt of the order. Such cancellations/reimbursements do not apply to personalised goods, or perishable goods in transit.

2.3.4 The consumer should be informed in good time during the performance of the contract of any proposed alteration to the agreed contents, or of any intention to deliver a substitute product. The consumer should in these cases be given the opportunity to cancel and obtain reimbursement, if any financial payment has already taken place.

### 2.4 *Right of withdrawal*

2.4.1 The consumer should enjoy a period of no less than seven working days within which he/she is entitled to return goods or to decline an ordered service without any reason and incurring no penalty. <sup>6</sup>This includes the possibility to exchange a product, or obtain reimbursement, if payment has already taken place.

2.4.2 Where the marketer has failed to comply with the contractual obligations as set out above, this withdrawal period may be extended to three months. The seven-day period will then begin the moment the obligations have been fulfilled.

<sup>5</sup> FEDMA recommends that marketers do not debit credit cards, cash cheques or effect money transfers until the order has been processed and the product is ready for shipping.

<sup>6</sup> This seven day period begins on the day of receipt of the order by the consumer; or in the case of a service on the day of the conclusion of the contract

2.4.3 The marketer should point out clearly in the commercial proposal any possible restriction to this right of withdrawal contained in European and/or national legal or self-regulatory provisions. This should take into account the specific characteristics of certain goods and /or services<sup>7</sup>.

2.4.4 Where the right of withdrawal is exercised, the consumer is only financially liable for the direct cost of returning goods.

2.4.5 Any request that products should be returned in their original packaging in order that the consumer may benefit from his/her right of withdrawal from a

contract, or from the repair/replacement of defect goods under a guarantee, should be reasonable. It is not reasonable for consumers to keep the original product packaging for more than one month.

### 3. *Commercial communications*

3.1 Every commercial communication should be clearly identifiable as such.<sup>8</sup> The originator of the communication, whether a natural or legal person, should likewise be clearly identifiable. This provision extends without exception to unsolicited commercial communications via electronic mail.<sup>9</sup>

3.2 All promotional offers and games shall be clearly identifiable as such. The qualifying conditions attached should be unambiguous, accurate and unequivocal.

3.3 Internet technology should not be used to mislead consumers about the nature of the product or service being promoted or offered. In addition, marketers should not deceptively restrict a consumer's freedom to exit sites, and should endeavour to ensure that search terms fairly reflect the content of the site.

7 The right to return does not apply to made-to-order goods, or products that must be consumed quickly (e.g. some foodstuffs) or, copyrighted products that are sealed (e.g. CDs, videos) where the seal is broken. See the Distance Selling Directive.

8 The definition of Commercial Communications, as stated in the European Commission's Green Paper on Commercial Communications on the Internal Market [ (COM 96) 192 final, 8.05.96 ] can be summarised as all types of promotional communications for products or services, covering advertising, direct marketing and sales promotion.

9 Further provisions on unsolicited commercial communication by e-mail are provided in Section 7 of this Code «Data Protection and Consumer Privacy»

3.4 Where price comparisons are made these should not be misleading. Any comparisons referring to a special offer should indicate the date on which the offer starts or ends and any other specific conditions that apply.

3.5 Evidence must be available to substantiate advertising claims.

### 4. *Transactional security*

4.1 Marketers should recognise that online consumers are investing trust and confidence in their organisation and the products and/or services offered, and should in consequence make every effort to ensure that the consumer is satisfied with the security of the financial transaction process.

4.2 Marketers should provide consumers with secure and uncomplicated payment mechanisms, making appropriate efforts to keep abreast of technological advance in this field.

4.3 Marketers should ensure that appropriate and trustworthy security systems are established within their companies to safeguard the security, integrity and confidentiality of financial transactions and payments made by consumers. The consumer should be made aware, prior to the conclusion of a contract, of the level of protection his financial data is being afforded. Marketers should inform the consumer in general terms of any technology being used to protect the transmission, processing and/or storage of their financial data e.g. the use of data encryption technology for credit card transactions.

### 5. *Data protection and consumer privacy*

5.1 This section should be read in close conjunction with the FEDMA Draft European Code of practice on the use of Personal Data in Direct Marketing.<sup>10</sup>

5.2 Marketers must make clear to consumers their policy on the protection of personal data and consumer privacy. Marketers should fulfil this commitment by posting and adhering to an online privacy policy statement which details their obligations and the rights of the data subject.

Any such statement should, as a minimum, cover the following:

#### 5.3 *Obligations of the company*

To provide information, where this is not obvious from the context, on why the personal data are being requested and collected, and to what purpose(s) they will be put. Only such personal data as are reasonably necessary for the execution of the purpose(s) specified should be solicited and collected.

To provide information on whether collected personal data may be disseminated, e.g. to other marketers. For example, if the data are likely to be transferred to a third party, information on the intended purpose(s) to which the data will be put.

To inform consumers, in non-technical terms about the use of any technology to accumulate or track non-personally identifiable data provided e.g. the use of Cookie

Technology<sup>11</sup>. Information on the purpose of using such technologies and on the implications of restricting the use of such technology is also encouraged.

10 Presently being negotiated with the «Article 29 Group» (national data commissioners and the EU Commission).

11 Cookies are information files that web browsers place on the user's computer when he/she visits a website. Most browsers accept cookies automatically. Cookies collect details of the computer, not data of the specific user.

To inform on procedures for access, updating, correcting or deleting personal data, and provide a contact point where data subjects can raise concerns about their personal data<sup>12</sup>. This information should accompany requests for personal data.

To inform on procedures for access to any preference service/opt-out register mechanism that the marketer consults<sup>13</sup>. Marketers should clearly indicate, e.g. by a reference, what particular data processing the opt-out applies to. Marketers must regularly consult such services or systems, and respect the wishes of natural persons registered therein. This is especially applicable to marketers engaging in the transmission of unsolicited commercial communications, via e-mail or otherwise.

To provide on request measures taken by the company to ensure the security of personal data collected and stored. In particular, information should be provided on how data is protected against leakage, tampering and misuse and/or any activity that may cause an alteration in its status, format and/or accessibility.

### 5.4 *Rights of the data subject*

To have access to a privacy policy that sets out the obligations of the marketer's company (as listed above). This should be available during any transaction engaged in with the marketer.

To object to the use of his/her personal data for future marketing purposes.

To object to the transfer of his/her personal data to Third Parties.

To participate in any preference service/opt-out register mechanism operated or consulted by the marketer, and to refuse any further use of his/her data for commercial purposes over and above those initially specified by the marketer.

To have their data deleted in the case of a transaction abandoned prior to completion.

To request access to modifications, corrections or deletion of his/her personal data file as held by the company<sup>14</sup>.

To expect that any personal data provided be processed and stored in a secure and confidential manner.

12 Consumers are entitled to access and demand rectification of their personal data. The Directive 95/46/EC of the European Parliament and the Council on the Protection of Individuals accord this right with regard to the processing of personal data and on the free movement within the EU of such data.

13 This includes in-house suppression systems («do not contact» lists).

14 Consumers have the right, under Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, to access, verify and request modification/rectification of their stored personal data.

## 6. *Protection of children*

6.1 Marketers should encourage parents to involve themselves in their childrens' on-line activities, and where possible should provide parents with information on how monitoring/supervising of these activities can be carried out.<sup>15</sup>

6.2 Marketers targeting children, or for whom children are likely to constitute a section of their audience, should not exploit children's credulity, loyalty, vulnerability or lack of experience.

6.3 Any commercial communication aimed at children should be drafted in such a way as to take into account the age, knowledge and the level of maturity of the intended audience.

No communication should contain any material likely to be harmful to them, physically, mentally or morally.

6.4 Care should be taken that advertising material suitable only for adults should not be communicated to children, and that adult products do not fall into the hands of children.

6.5 Care should be taken not to encourage children to enter sites suitable only for adults or sites that could be reasonably judged to be inappropriate, nor to encourage them to copy any practice that may be unsafe, nor to communicate with strangers

6.6 Marketers should encourage children to gain consent from their parents/guardians before making any commitment to purchase goods or services.

6.7 Offers of credit should not be made to children.

15 This education process could take the form of providing information about

current software tools and technologies, e.g. in the field of privacy enhancement, which parents could explore further in order to make the Internet safer for their children. Where relevant, marketers should endeavour to monitor the extent to which children use their websites.

### 6.8 Personally Identifiable Information on Children

6.8.1 Marketers should not use or disclose personally identifiable information about children without the prior verifiable consent of a parent/guardian/teacher. A child should be required to supply his/her age before any further personal information is requested by a website. 16

6.8.2 Marketers should provide clear notices of their request for such personal data, with easy-to-understand explanations of the purpose(s) for which the information is being collected. Marketers should not solicit more personal data from the child than is necessary for his/her participation in the website activities.

6.8.3 Awareness notices should be used to encourage children to obtain permission from their parents/guardians before entering personal data. Such notices should be displayed at the point where the information is requested, be clear, prominent and easily understandable by young children.

6.8.4 Marketers should endeavour to inform parents/guardians if third parties might collect personally identifiable information about their children via their website. Parents should have the right to object to the disclosure of their child's information to any such identified third party.

6.8.5 Marketers should not make a child's access to a website contingent on the collection of detailed personal information. In particular, special incentives such as prize offers and games should not be used to entice children to divulge detailed personal information.

6.8.6 Marketers should take necessary steps to ensure that children are protected from unsolicited commercial e-mail communications, which do not relate to their interests.

### 7. Consumer redress

7.1 Marketers should provide clear information on their compliant procedures, in particular how to go about making a complaint and who to contact.

#### 7.2 Complaints

7.2.1 Marketers should operate effective in-house complaint procedures. They should be confidential, free to use, easy to access and to operate. Where possible, they should seek to acknowledge complaints.

7.2.2 Every effort should be made to resolve complaints to the satisfaction of the consumer within a specified time limit. This time period should not exceed 30 days of receipt of the complaint.

16 In the continued absence of an EU level consensus on the upper age limit for a «minor», marketers should respect applicable national regulations. Marketers should inform the consumer in good time of any necessary extension to specified time period. They should also endeavour to record and monitor complaints.

7.2.3 In the event that a complaint cannot be satisfactorily resolved directly with the marketer, the consumer should have redress to the national Direct Marketing Association (DMA) or the relevant equivalent body at the national level.

7.2.4 Where the marketer adheres to a national code of practice in e-commerce, the marketer should inform the consumer of, and abide by the complaints redress procedure as provided for in that code. The FEDMA provisions on consumer redress should be incorporated into any national procedures.

7.2.5 The marketer should inform the consumer of any Alternative Dispute Resolution Systems (ADRs) to which the consumer can refer a complaint for resolution if he/she wishes<sup>17</sup>.

#### 7.3 Transnational complaints

7.3.1 FEDMA recognises that increasing e-commerce means an increased probability of cross-border or transnational complaints. 18 FEDMA defines such a complaint as one raised against a marketer whose country of origin is other than the country of residence of the consumer at the time the complaint is lodged.

7.3.2 In resolving such complaints, marketers should apply the same provisions as in the case of national complaints. This refers in particular to the time period accorded to the resolution of complaints, obligations to inform of any necessary delay, and of the existence and right to use ADRs.

7.3.3 Given the «borderless» nature of e-commerce and the linguistic and cultural differences existing between European countries, FEDMA recognises the difficulties which marketers and consumers face in terms of the satisfactory resolution

of transnational complaints.

7.3.4 To help marketers overcome this obstacle to providing satisfactory online customer service, FEDMA proposes to develop an online Consumer Complaints Resolution Mechanism (CCRM), complete with a multilingual facility. This should be easily and obviously accessible through a hyper-link on the marketer's homepage.

7.3.5 Marketers should use this mechanism when it becomes available.

17 Without prejudice to the consumer's right to seek redress through traditional methods of litigation.

18 In terms of advertising, « *a Cross-Border Complaint is a complaint by a person or organisation in one country about an advertisement carried in media circulating in that country but published in another*». European Advertising Standards Alliance « Advertising Self-Regulation in Europe », 1997, P.35

### 8. Monitoring and enforcement

8.1 Companies and associations adhering to this Code of Conduct can be identified via the prominent display on their websites of a Guarantee Seal recognised by FEDMA.19

Clicking on a Guarantee Seal should provide immediate access to the provisions of this Code.

8.2 Companies may wish to provide the user with warranties additional to those granted by the provisions of this Code. In this case, companies should inform the user of their particular policies by means of an on-line notice.

8.3 This code of conduct will be adhered to by: National Direct Marketing Associations (DMAs) and their respective members Direct FEDMA members. Any other accredited online direct marketer

8.4 Procedures for the monitoring and enforcement of the provisions of the Code at both levels are detailed below. The procedures for the resolution of consumer complaints are detailed in Section 7.

#### 8.5 Monitoring and Enforcement at national DMA level

8.5.1 The national Direct Marketing Associations are responsible for the strict application of the code provisions amongst members and/or incorporation into their national selfregulatory initiatives if such exist.

Where national self-regulatory initiatives do exist, sanctions applicable to a breach of the national code of conduct should be extended to the provisions of the FEDMA Code.

Where there is no national self-regulatory system, DMAs should use an existing, or establish a procedure to ensure compliance with the FEDMA Code provisions at the national level.

8.5.2 Any contravention of the provisions of the FEDMA code, which cannot effectively be dealt with at the national level, should be referred for consideration to the FEDMA Monitoring Committee. Similarly, any decision taken at the national level to sanction a

19 The FEDMA policy on Guarantee Seals is an integral element of the Ring of Confidence Project. Its format will be decided upon during the execution of the project serious and/or consistent breach of the FEDMA provisions by removing a FEDMA recognised guarantee seal from a member's website, should be referred to the FEDMA Monitoring Committee for approval before execution.

8.5.3 A person should be nominated within each national DMA to assume responsibility for liaison with FEDMA on matters pertaining to the application and enforcement of the FEDMA Code provisions.

#### 8.6 Monitoring by FEDMA members and other accredited marketers

8.6.1 Marketers adhering directly to this code of conduct must assume direct responsibility for compliance at all times.

Companies should have, or establish, an effective internal enforcement procedure, which can cover the enforcement of the FEDMA provisions.

A person should be nominated within the organisation to act as a liaison with the FEDMA Monitoring Committee on matters pertaining to the application and the enforcement of the FEDMA Code provisions.

The FEDMA Monitoring Committee must be informed of any serious and/or consistent breach of any of the Code provisions.

Companies are subject to any decision taken by the FEDMA Monitoring Committee.

#### 8.7 FEDMA Monitoring Committee

8.7.1 A Committee should be established within FEDMA to monitor the overall application of the FEDMA Code. The Committee will report to the FEDMA

Board.

The Committee will be composed of an independent chairman, the contact persons from the national DMAs as established in article 8.5.3; a contact nominee within FEDMA; and three representatives from companies who are members of the FEDMA Board.

The Committee should adopt its own internal rules of procedure.

8.7.2 The functions of the Committee are:

To review regularly the code and consider on an annual basis if a revision of the Code is necessary; the first review of the code should take place six months after the date of adoption; to resolve any outstanding cross-border complaints in co-operation with IFDMA (International Federation of Direct Marketing Associations) and EASA (European Advertising Standards Alliance), as appropriate in accordance with the procedures of the Consumer Complaints Resolution Mechanism (CCRM); to consider any contravention of the Code brought to its attention by a national DMA; a direct member company nominated staff member, or an individual consumer. The Committee, with due regard to the type of contravention, may decide to recommend to the FEDMA Board sanctions or the expulsion of the member, according to its rules of procedure.

8.8 FEDMA may consider the possibility of initiating action against a member or a nonmember in order to safeguard the ethics of the profession.

8.9 Non-compliance with the provisions of this Code may also result in specific legal actions from the national supervisory authorities.

### 9. *Applicable Law*

9.1 Marketers should respect the law relating to marketing activities and self-regulation in their country of establishment in the European Union and European Economic Area<sup>20</sup> Marketing activities at EU level are all fully applicable to the on-line environment<sup>21</sup>.

<sup>20</sup> Hereafter the EU and the EEA.

<sup>21</sup> Refer to the explanation of Applicable Law as detailed in Annex II

#### *Annex I : Definitions/Terms*

For the purposes of this Code of Conduct, the following definitions apply:

#### *Electronic Commerce (e-commerce)*

Any partial or wholly electronically conducted transactions where online marketers provide goods or services to any natural person (consumers) acting for purposes outside his/her trade, business or profession.

#### *Online Marketer*

Any party offering to sell products and/or services, and/or engaging in advertising and marketing electronically.

#### *Self-Regulation*

Norms (standards, rules of behaviour) developed, accepted and implemented by those who are taking part in an activity, e.g. a sector of industry or commercial activity.

#### *Distance Selling*

Any commercial activity carried out through a means of communication at a distance, i.e. where there is no physical presence of both parties concerned during the process of the sale. In this Code, the means of communication is the Internet.

#### *Commercial Offer*

Concerns the presentation or solicitation of goods or services by a company to a consumer

#### *Commercial Communications*

All types of promotional communications for products and services, covering advertising, direct marketing, sales promotion, sponsorship, direct selling or point of sale (in this case a website).

#### *Unsolicited Commercial Communications*

Prospective commercial communications targeted at people with no previous commercial relationship with the company (including to people who have expressed their desire not to receive such commercial communications).

#### *Preference Services/Opt-out Registers*

Suppression files of consumers who have registered their wish not to receive unsolicited direct marketing approaches, against which marketing lists and files are matched.

#### *Personal data*

Any information relating to an identified or identifiable data subject.

#### *Data subject*

Any identified or identifiable natural person. An identifiable person is one who

can be identified, directly or indirectly, in particular by reference to an identifiable number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

### *Third Party*

Any natural or legal person other than the data subject or the data controller who is authorised to process data provided by the data owner.

### *Alternative Dispute Resolution Systems (ADRs)*

Either official bodies set up by the authorities to provide a dispute resolution process; or  
recognised mediation/conciliation systems provided by industry and /or independent bodies to provide dispute resolution processes between consumers and businesses, or between businesses.

### *Annex II : Applicable Law*

This Code of Conduct has at its base three principles which FEDMA believes are key to the development of e-commerce in Europe:

Respect for the basic principle of free circulation of goods and services in e-commerce;

Respect for the principle of country of origin and mutual recognition;

Respect for the Consumer Protection provisions of existing EU legislation,<sup>22</sup> notably the Directive on Distance Selling, as fully applicable to e-commerce activities.

Companies adhering to the FEDMA Code of Conduct should respect the law relating to marketing activities and self-regulation in their country of establishment in the European Union, the European Economic Area, and the EU Accession countries<sup>23</sup>. This principle is in accordance with the provisions of Article 3 of the E-Commerce Directive, which clearly states that:

Each Member State shall ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the co-ordinated field

In the case of contractual obligations with consumers, which are excluded from the provisions of this Directive, consumers shall be informed of the law deemed applicable to the contract, as decided upon by the parties concerned.

In the event that disputes arise between the online marketer and the consumer, FEDMA encourages<sup>24</sup> the development of Alternative Dispute Resolution Mechanisms (ADRs), in line with the E-Commerce Directive.

FEDMA is confident that its efforts to create online Trust and Confidence through the Ring of Confidence concept for E-Commerce will help to reduce the volume of disputes between online marketers and consumers<sup>25</sup>, and that questions of applicable law regarding online disputes on consumer contracts will be reduced significantly as consumer satisfaction is obtained from the complaints resolution service offered as part of the Ring of Confidence.

<sup>22</sup> Among others, Directive 97/55/EC concerning misleading and comparative advertising; Directive 85/374/EEC on liability for defective products; Directive 92/59/EEC on general product safety; Directive 98/6/EC on consumer protection in the indication of prices of products offered to consumers; Directive 98/27/EC on injunctions for the protection of consumers interests and Directive 1999/44/EEC on certain aspects of the sale of consumer goods and associated guarantees

<sup>23</sup> [Marketers not established in the EU or in the EEA, and who wish to adhere to this code of conduct, should keep in mind that the choice of law made by the parties to a contractual agreement should not have the result of depriving the consumer of the protection afforded to him by the mandatory rules of the country in which he/she has habitual residence.]

<sup>24</sup> Directive 2000/31/EC, Article 17.2 «Member States shall encourage bodies responsible for the out-of-court settlement of, in particular, consumer disputes to operate in a way which provides adequate procedural guarantees for the parties concerned.»

<sup>25</sup> By adhering to this Code of Conduct, companies are engaging in a high standard of online business practice. The Ring of Confidence includes the development of a Multilingual Consumer Complaints Resolution Mechanism (CCRM), the effective use of which will prevent problems reaching the stage where they can be called disputes.

### *Annex III : Legislative and Regulatory Basis of the Code*

This Code of Practice has been drafted in accordance with, and with reference to the principles of the following EU legislation Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of

## Codice della pubblicità

Information Society Services, in particular electronic commerce, in the Internal Market (E-Commerce Directive) OJ L 178, 08/05/2000

Directive 97/7/EC of the European Parliament and the Council of 20th May 1997 on the Protection of Consumers in respect of Distance Contracts (Distance-Selling Directive) OJ L 144, 04/06/97.

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23/11/95.

Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector, OJ L 24, 30/01/98.

Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997

amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising OJ L 290 of 23/10/97.

The provisions of the Code have been developed with reference to the following selfregulatory instruments, at global, European and national level:

ICC International Codes of Marketing and Advertising Practice

OECD Draft Recommendations of the Council Concerning Guidelines for Consumer Protection in the context of Electronic Commerce European Convention on Crossborder Mail Order and Distance Selling (EMOTA Convention)

Federal Trade Commission (FTC) : Children's Online Privacy Protection Act (COPPA) 1998

Eurocommerce European Code of Conduct for On-line Commercial Relations

Better Business Bureau BBB*OnLine* Code of Online Business Practices

ECOM (Electronic Commerce Promotion Council of Japan) : ECOM Guidelines for Online Business

EASA (European Advertising Standards Alliance)

European national Self-Regulatory Schemes :

TrustUK (UK)

L@belsite (FR)

Guarantia (ES)

E-Com Trust (CH)

The Electronic Commerce Platform Nederland (ECP.NL) Code of Conduct for Electronic Commerce

The Rules for Fair Play (FI)