

## **EFAMRO and ESOMAR Position Paper**

### **A Response to the European Commission's Call for Evidence on the European Data Union Strategy**

This paper is submitted on behalf of:

**EFAMRO** the European Federation of Associations of Market Research Organisations. Founded in 1992, EFAMRO represents the interests of market, opinion and social research in Europe. Its members are national trade associations for research businesses across Europe.

**ESOMAR** the worldwide, not-for-profit membership organisation committed to empowering and connecting the research, insights, and analytics community. Since 1947, we have empowered professionals and businesses to unlock their potential on both the global and local stage, fostering connections, collaboration, growth, and knowledge. Today, we represent and provide connections among 50,000+ individuals and 750+ companies in 130+ countries.

**EFAMRO and ESOMAR** represent the research and insights sector, accounting for a reported annual turnover of €34.02 billion in Europe.

### **1. About Market, Opinion and Social Research**

- 1.1 Market research is comprised of all forms of market, opinion, and social research (herein referred to as "Market Research").
- 1.2 Market Research is the systematic gathering, analysis and interpretation of information about individuals or organisations. It uses the statistical and/or analytical methods and techniques of the applied social, behavioural, data and other sciences to generate insight and support decision making by providers of goods and services, governments, non-profit organisations and the general public.
- 1.3 Market Research stands at the heart of well-informed commercial, social and political decisions. Its purpose is to deliver information and insights about people's behaviour, needs and attitudes to inform decision making by providers of goods and services, governments, individuals, and society at large. Insight into what makes the success of a product, business initiative, consumer behaviour or government policy strategy is often the hidden – yet defining – factor that determines success and failure. It is our sector that provides the deeper intelligence needed for our world today by representing citizens' authentic voices, from all levels of society, in an unbiased and representative way by applying the tenets of statistical and scientific methods.

- 1.4 Market Research associations apply a comprehensive framework for self-regulation to ensure that researchers meet their ethical, professional, and legal responsibilities to the individuals whose data they use in research and to the clients and organisations which commission research. Members subscribe to self-regulation schemes that protect respondents' and participants' rights.

## **2. Purpose of our Response**

- 2.1 EFAMRO and ESOMAR welcome the European Commission's efforts to develop a coordinated European Data Union Strategy that promotes data sharing, enhances data quality and addresses regulatory fragmentation and legal uncertainty. We support the strategy's focus on clarifying and improving international data transfer mechanisms, as well as facilitating voluntary data access to enable more competitiveness and innovation in the European data economy.

- 2.2 In light of this important initiative, our associations would like to contribute several considerations to support the successful adoption and subsequent implementation of the strategy. Since the GDPR has entered into force, our members have highlighted to us significant implementation challenges relating to the allocation of data protection responsibilities among complex data chains e.g., which parties are controllers, joint controller or processors. There has also been a great deal of uncertainty and inconsistency between member states in the interpretation and application of the GDPR scientific research provisions and exemptions for data processing activities in relation to market research activities. Accordingly, we call for clearer and more harmonised interpretations of data protection rules under the GDPR, with an interest in resolving uncertainties on exemptions for specific processing activities and the allocation of data protection responsibilities. We also call for greater alignment across data regulatory frameworks, including the GDPR, the AI Act and the ePrivacy Directive, to enable ethical, transparent and legitimate research practices while guaranteeing sufficient protection of individuals' digital rights.

## **3. Towards a Harmonised and Streamlined European Approach to Data Protection**

- 3.1 **Legal clarity in the GDPR.** The GDPR has played a fundamental role in setting global standards for data protection. However, since its implementation, several key challenges have emerged, including the lack of harmonisation across Member States, conservative interpretations by regulators and inconsistencies with other legislative frameworks. These issues have led to legal uncertainty for businesses, including for the market research sector. In this context, we welcome the Commission's efforts to simplify and streamline existing EU data frameworks to foster innovation, reduce administrative burdens and enable international data flows. To support these objectives, we recommend the development of clearer and more harmonised guidelines on the

application of the GDPR in complex data chains like those frequently found in market research use-cases. There are several areas where greater clarity would significantly benefit the market research sector:

- 3.1.1 **Clarifying roles and responsibilities in data processing chains.** We support the need for accurate and factual delineation of the roles and responsibilities of controllers, processors and third parties under the GDPR. In the context of market research activities, the dichotomy of controller, joint controllers and processor is not always clear or reflective of the complexity of a data chain, resulting in legal uncertainty around liability and responsibility in the personal data processing chain. Emerging case law and regulatory guidance seem to suggest that the GDPR increasingly places the responsibility for data controllership on the client commissioning a research project, due to the assumption from non-practitioners that the client determines the 'purpose' and the 'means'. This narrow interpretation of the GDPR significantly distorts the genuine nature of the research data chain, erodes confidentiality, and diminishes autonomy over resources across the chain. In fact, commissioning clients often do not determine the methodology or specific detailed purposes of research projects, nor do they receive any personal data from research suppliers which undertake the research projects on their behalf. In fact, these projects often depend on the research suppliers specialised expertise to shape detailed proposals, with limited involvement from commissioning clients. The research suppliers assume full responsibility for both controlling and processing the data accordingly. Yet, the overall responsibility of control is still being attributed to the commissioning client by default.

Clients often commission research agencies to provide independent, evidence-based answers to specific business or strategic questions. These research projects typically involve complex data processing chains, where responsibilities and decision-making are distributed across multiple actors. This complexity makes it difficult to apply GDPR concepts in a straightforward way. For example, in a one-off client project where a commissioning client instructs a research agency on how to conduct a survey and report anonymised results, the agency acts as a processor, following the client's instructions. However, the research agency may simultaneously take on a controller role for specific processing activities it determines independently, such as quality control or fraud detection, which fall outside the scope of the client's instructions. This demonstrates how role attribution can vary even within a single project, depending on the activity and level of autonomy involved. To address these complexities, research projects are often more effective if deconstructed into different singular activities and then grouped into phases, allowing for a clearer and more accurate assessment of each party's role.

As such, we recommend abandoning the current one-size-fits-all approach in determining and allocating data protection attributions, such as assuming all commissioning clients must

be controllers, as it risks oversimplifying data processing activities. Rather, we recommend the European Commission consider and apply a case-by-case assessment which would consider the nature of the partnership, the degree of instruction, and the personal data flow, which would effectively engender more factual and accurate distributions of responsibilities. The aforementioned challenges that research stakeholders face in the data processing chains can be resolved further through the adoption of clear guidelines on the application of GDPR's rules on data protection attribution to market research activities, enhanced collaboration with regulatory and supervisory authorities, as well as the development of international codes of conduct that ensure the adherence to ethical and professional standards in the data processing activities. We believe such approach would allow for enhanced legal certainties for research sector stakeholders, while also contributing further to an optimised level of data protection in the research project supply chain and beyond.

3.1.2 **Enabling a common framework for scientific research.** When taking into consideration rules on the processing of personal data for scientific and statistical purposes, we strongly advocate for a broad and inclusive interpretation of Article 89 GDPR to reflect the diversity of legitimate research activities in today's data-driven economy. The current provisions fail to provide a definition of "scientific research" as well as sufficient and clear criteria on how to determine which practices qualify under this definition. Furthermore, where an activity could fall within the scope of scientific research, it remains unclear whether the application of Article 89 is mandatory or left to the discretion of the data controller. This creates legal uncertainty and operational challenges for the market research sector and could lead to inconsistent applications. To address these issues, we propose the following recommendations:

- Scientific research should continue to be framed broadly rather than be constrained in fixed regulatory boundaries, both at EU and national level.
- The concept of "scientific research" should be focused on all kinds of empirical scientific research where personal data of the research subjects (i.e., the participants) are processed, which is also, for example, the case in market, opinion and social research. This aligns with international approaches such as the UK's Data Use and Access Act (DUAA), which draws from international standards to broadly define scientific research as activities aimed at increasing the pool of knowledge – including knowledge of humankind, culture and society – and developing new applications of existing knowledge. Such inclusive framework reflects how research is conducted across different sectors and for different purposes and helps to provide greater legal certainty for all researchers.
- The identification of scientific research should reflect the wide diversity of research purposes, funding sources, and applications. It is important that all legitimate forms of research are recognised and supported under this framework.

The current lack of a clear definition or criteria for scientific research in the GDPR has led to inconsistent interpretations across Member States. Such legal fragmentation undermines the Digital Single Market, creates uncertainty for data controllers and processors, and imposes disproportionate burdens on SMEs. We therefore urge the Commission to promote a common framework for scientific research, grounded in Article 89, to be adopted as guiding principle by personal data processing operators. This common framework should recognise scientific research as a legitimate purpose for access to personal data and cross-border data flows and should provide harmonised criteria and safeguards for data processing activities. In this context, international codes of conduct, such as the ICC/ESOMAR International Code on Market, and Social Research and Data Analytics, can play a significant role, as they establish the ethical and professional standards for research practitioners and the research sector, and offer clear guidance on the responsible use of data, transparency and accountability. As such, these codes can support decision-makers in leveraging high-quality, ethical research to develop effective strategies that ultimately benefit citizens and end-users alike.

Moreover, as the EU AI Act progresses towards implementation, we stress the need to ensure alignment between its provisions and the GDPR, particularly in relation to the processing of personal data for scientific and statistical purposes. In line with the Data Union Strategy's objective to harmonise the interpretation and application of data protection rules across the EU, we support the need for consistency in how scientific research is defined and which exemptions apply across both the AI Act and the GDPR. This is particularly necessary to guarantee the responsible use of data in AI development and deployment by the market research sector, while also ensuring compliance with data protection laws. We therefore support the development of sector-specific guidance alongside representative trade associations and call for a recognition of self-regulatory instruments, such as international codes of conduct, as effective tools for the interpretation of such legal requirements in the context of market research.

- 3.2 Aligning the GDPR with the ePrivacy Directive.** With the withdrawal of the ePrivacy Regulation in early 2025, our associations urge the European Commission to re-establish a coherent and harmonised regulatory framework for data protection and electronic communications in the EU. The rules set out in the ePrivacy Directive are outdated, inconsistently implemented across Member States, and lack alignment with other data governance and data protection frameworks, particularly the GDPR. Overlapping but inconsistent rules between the GDPR and the ePrivacy Directive, particularly around consent, exemptions for scientific research, and the use of audience measurement tools, continue to create uncertainty and require cumbersome implementation for market research stakeholders, which rely on the legitimate and ethical use of electronic communications data for research purposes.

Audience measurement, in particular, is an essential indicator of the health of Europe's media landscape, and of current and future trends that may impact it. During negotiations on the proposed ePrivacy Regulation, important progress was made with the introduction of exemptions for audience measurement activities. These provisions offered greater legal certainty for producers and users of aggregated audience data and reflected the important role that audience measurement plays in supporting a fair and transparent digital ecosystem.

In light of these complexities, we encourage the Commission to ensure that any future legislative initiative builds on the progress made regarding audience measurement. More broadly, a revised and comprehensive framework should address the disparities between the outdated ePrivacy Directive and the GDPR. Such approach should streamline requirements, reduce duplication and ultimately enhance legal certainty for economic operators, while supporting the objectives of data protection and responsible use of data across the Digital Single Market.

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