

## *Response to the proposed amendments following publication of draft Albrecht Report*

26 April 2013

### **Executive Summary**

---

- Article 83 should provide strong safeguards to prevent decision making about data subjects, while continuing the legal presumption in favour of processing for historical statistical and scientific research purposes. Accordingly, we support **Amendments 3054, 3068, 3069**.
- We recommend the rejection of **Amendment 3080**, which would create a split between the public and private sector, contrary to the aims of the legislation.
- We support **Amendments 858, 906, 951, 3062, 3065, and 3069** as addressing our concerns on Article 83's relationship with the remainder of the draft Regulation text.
- We partly support **Amendment 643** but recommend further amendments are necessary to ensure that it does not create artificial divisions between research projects in the same class of activities.
- We draw attention to a series of compromise amendments adopted in JURI, which provide robust alternatives responding to our observations above and have already received cross-party support in JURI. We accordingly support **JURI Amendments 5, 46, 86, 187, and 190** and invite LIBE MEPs to consider transferring these amendments into the final Albrecht report. JURI Amendment 5 makes clear that consent collection must be adapted to the media used and recalls the possibility to express it through a browser or other application. The regulation must remain technologically neutral to ensure future proofing. Additionally, requiring automatic written consent would render impossible the conducting of telephone surveys preventing our purpose of general interest.

## **1. About EFAMRO and ESOMAR.**

---

This response is submitted on behalf of EFAMRO, the European Research Federation, and ESOMAR, the World Association of Research Professionals. In Europe, we represent the market, social, and opinion research sector, accounting for an annual turnover of €10.16 billion. Our sector produces research outcomes informing decisions of public authorities (e.g. the Eurobarometer, TV audience measurement), the non-profit sector (opinion polling), and business (satisfaction surveys, product improvement). In a society increasingly driven by data, our sector ensures access to quality, relevant, reliable, and aggregated data sets, leading to better decision-making, targeted and cost-effective public policy, and economic development leading to growth and jobs.

## **2. Amendments to Article 83 of the regulation.**

---

*The exemption for research, subject to adequate safeguards, is a successful and uncontroversial part of the Council of Europe Convention 108 and Directive 95/46/EC. Article 83 should continue to reflect the balance of the current Directive. There must be safeguards, especially preventing the use of processing undertaken for historical, statistical and scientific research purposes to make decisions about the data subject. However, processing for historical, statistical and scientific research purposes should not be considered incompatible with further processing, i.e. there should be a presumption in favour of the research purpose.*

*These provisions allow access to historic data to compile research and statistical records, which in turn inform better and more accurate assessment of, and decision making on, important economic and social activities in Europe.*

We have reviewed the additional amendments to the draft Data Protection Regulation. Noting approximately 60 new amendments specific to Article 83, our position is driven by the need to ensure the Article responds to a wide variety of legitimate research purposes.

In our February 2013 statement, we underlined our sector's concern with the introduction of a prior consent requirement for the processing of children and sensitive data. We presented a number of case studies underlining how such a requirement would adversely impact legitimate research projects. As a result, we continue to recommend the rejection of any amendment limiting access to these classes of data, beyond the current requirements enshrined in Directive 95/46/EC.

Amendments to Article 83 should provide greater clarity, consistency, and proportionality. We underline our preferences for:

- **JURI Amendments 187 and 190** provide a proportional framework for historical, statistical, scientific purpose.
- **Amendment 3054** over Amendment 3055 as it provides the most proportionate secondary requirement for the processing of data under Art. 83;
- **Amendment 3068** over Amendments 3057 and 3059 as providing the most appropriate safeguard for more sensitive medical data, which is disproportionate for other classes of data;
- **Amendment 3069** as it provides a clear statement of the compatibility of research purposes with further processing.

We **recommend rejecting of amendment 3080** which would exclude research for commercial ends (*des fins commerciales*). This would create a split between the public and private sector, which is contrary to the aims of the legislation, and would not provide further protection for data subjects, as “research purposes” already excludes any direct action or decision making in regard to data subjects.

### **3. Linking Article 83 of the regulation to Articles 5, 6, and 20.**

---

*There should be a clear interaction between the constituent parts of the Regulation in regard to historical, statistical and scientific research purposes. In summary, it should be clear that:*

- *Further processing for historical, statistical and scientific research purposes are not incompatible with the purposes for which data were originally processed (as in Article 6.1(b) of Directive 95/46/EC).*
- *Historical, statistical and scientific research is a ground for the lawful processing of personal data, as a legitimate purpose of the data controller.*
- *The provision in Article 20 (profiling) relates to direct action in regard to individuals and does not apply to processing for historical, statistical and scientific research undertaken in accordance with Article 83.*

In our February statement, we underlined our concerns that the relationship of Art. 83 to other key Articles was not sufficiently defined and that this would create legal uncertainty with regards to which Article supersedes. This was echoed in the Article 29 Working Party Opinion 03/2013 on purpose limitation, which noted that the Commission’s draft Regulation confuses the concepts of compatibility and purpose limitation.

Accordingly we welcome three sets of amendments put forward by MEPs.

- **Amendment 906** which proposes changes to Article 6, recognising research as a legitimate purpose.
- **Amendments 858 and 951**, which propose changes to Article 6, explicitly stating that historical, statistical or scientific purposes shall not be considered as incompatible with Article 5.
- **JURI Amendment 46, and LIBE Amendments 3062, 3065, and 3069** propose changes to Article 83, explicitly stating that historical, statistical or scientific purposes shall not be considered as incompatible with Article 5.

We therefore strongly recommend that in the process of adopting compromise amendments that these amendments be retained.

Whilst acknowledging the efforts to provide specific enabling text for market research through **LIBE amendment 1585** we recommend to MEPs to adopt the wording of **JURI Amendment 86** applied to Article 20 as this alleviates our concerns on profiling for the purposes of drawing up research samples, and also provides a more comprehensive principle-based approach to the question of setting a minimum bar before restrictions on profiling apply.

#### **4. Amendment to Recital 126 of the regulation.**

---

In our February statement, we proposed amending Recital 126 to explicitly include market, social, and opinion research in the application of Art. 83. The proposed text is included in Appendix 1 of the statement and we request MEPs consider replacing Amendment 643 with our wording.

Market, social and opinion research, is a description of a class of research activities, based on the applied social sciences. The vast majority of market research involves the collation and analytical reporting of people's opinions whether it is on public services or indeed new products to be brought by industry to the market; other aspects involve statistical analysis of existing data sets. Amendment 643 introduces artificial division between research activities, which does not exist in practice.

As a sector, market, social and opinion research is regulated by the same codes, and have a demonstrable track record of responsible data processing and analysis with similar levels of rigour to that found in academic research. We therefore welcome the inclusion of opinion and social research in Amendment 643 but note that "market" research should also be included to reflect the actual scope of the sector.

## **5. Conclusion**

---

In drafting this response, the market, social, and opinion research sector has concentrated its input on three key issues that would result from the report's adoption, namely amendments applied to Article 83 and their interaction with articles governing the lawfulness of further processing justified by Article 83. We have also responded to proposed amendments to Recital 126, as we believe these may negatively impact our sector's ability to contribute to effective decision making across private, non-profit, and public sectors.



For further information on EFAMRO and its activities, contact Barry Ryan, Director of Policy & Communication.

EFAMRO

Bastion Tower, level 20

Place du Champ de Mars 5

B-1050 Brussels

T : +32 (0)2 550 3548

F : +32 (0)2 550 3584

E : [barry.ryan@efamro.eu](mailto:barry.ryan@efamro.eu)

W : [www.efamro.eu](http://www.efamro.eu)



---

For further information on ESOMAR and its activities, contact Kim Smouter, Government Affairs Manager.

ESOMAR

Eurocenter 2, 11th floor

Barbara Strozilaan 384

1083 HN Amsterdam

The Netherlands

Tel: +31 20 664 2141

Fax: +31 20 664 2922

E : [public.affairs@esomar.org](mailto:public.affairs@esomar.org)

W : [www.esomar.org](http://www.esomar.org)