



Ms. Allegra Migliorini
Chairwoman of the DAPIX Committee
European Council of Ministers
Rue de la Loi 175
B-1048 Brussels, Belgium

20 October 2014

Dear Ms. Migliorini,

We write to you on behalf of ASSIRM, the Italian Association for Market, Social, and Opinion Research; EFAMRO, the European Research Federation; ESOMAR, the World Association for Market, Social, and Opinion Research; and WAPOR, the World Association for Public Opinion Research.

Together, we represent the market, social, and opinion research sector producing an annual turnover of over EUR 40bn and employing over 110,000 individuals worldwide. The sector provides essential insights to governments, charities, and business decision-makers in the pursuit of vibrant societies and economic growth.

Market, opinion and social research is an essential tool for evidence based decision making and policy. It is robustly self-regulated by a family of national and international codes of conduct, ensuring that data collected for research is strictly limited to research only, preventing harm or adverse consequences to individuals.

As the European Council of Ministers approaches the final stage of its internal debates to secure its position on the Commission's proposed General Data Protection Regulation, it has come to our attention that the Council is considering revising Articles which have in the past been successfully and uncontroversially been employed by market, social, and opinion researchers to support legitimate research activities on behalf of all the sectors we serve.

Indeed, released versions of the Council of Ministers' draft highlight that the Council of Ministers is considering proposals to introduce a bar of "public interest" to benefit from the exemptions foreseen in Article 83. We are aware of further proposals to separate Article 83 into distinct Articles for each of the grounds it previously covered with the same conditions. We believe that such an approach will unfortunately lead to more legal uncertainty than perhaps the proposers of these provisions realise.

How the research provisions in Directive 95/46/EC are used

Currently the Directive says:

Article 6

1. Member States shall provide that personal data must be:

...

(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible provided that Member States provide appropriate safeguards;

This provision, transposed in to national law, allows to existing data sets to be re-used for research purposes, for example creating a sample frame, or defining the universe of the population under study, which are necessary steps for statistical research.

Example:

Linking Academic Achievement to Career Pathways

This research project tracks how academic achievement at a specific university impacts individual's careers in later life. The project, conducted on behalf of a university involves using samples derived from the school's alumni records and matching these records with current information collected through interviews. Processing alumni records (not originally collected for this purpose) would be required to define a sample. In order to control for other variables, this may require the processing of sensitive personal data as defined by Article 9 of the Regulation. This is a necessary step prior to obtaining consent of the data subject as only then could selected individuals be contacted to secure their consent to proceed with an interview. At the end of the process, the data collected would be anonymised and aggregated into a report for the client in accordance with our codes of conduct.

Problems with Article 83

There are three different approaches currently being undertaken:

The Commission's original proposal broadly maintains the current position as set out in Directive 95/46/EC while introducing a preference for anonymisation or pseudonymisation.

The Parliament has amended the Commission's text of Article 83(1) as follows:

1. ~~Within the limits of~~ ***In accordance with the rules set out in*** this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:

(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information ~~as long as these purposes can be fulfilled in this manner~~ ***under the highest technical standards, and all necessary measures are taken to prevent unwarranted re-identification of the data subjects.***

These amendments to Article 83 effectively delete the research exemption for the use of personal data, by requiring anonymisation or pseudonymisation in all circumstances. They do not recognise situations where the processing of personal data is proportionate and necessary for research. This puts at risk significant European investment in research and the bans the use and analysis of routinely collected data to improve policy and inform decision-making.

Our understanding is that the Council has broken Article 83 into four different elements:

- Article 83a *Processing of personal data for archiving purposes in the public interest*
- Article 83b *Processing of personal data for statistical purposes*
- Article 83c *Processing of personal data for scientific purposes*
- Article 83d *Processing of personal data for historical purposes*

These provisions appear to cater to the needs of particular constituencies, national archives and historians, national statistical authorities, and medical and health scientists.

These categories of research are not the exclusive domain of historical, statistical and scientific research, as many of these activities are carried out by private entities who are able to conduct these types of research for public authorities because they are also able to finance themselves through projects commissioned by the non-profit and business sectors.

Market social and opinion research is primarily based on the applied social sciences and also may contain historical and/or statistical elements. In practice, there is no clear distinction between historical, statistical, and scientific and therefore they should properly be treated as a single class – as they have been since Convention 108 was drafted in 1981.

Market social and opinion research is also recognised as falling within this class of purpose, and is clearly cited as such by data protection legislation and authorities, for example in Section 32 of the German Federal Data Protection Act, in the UK Information Commissioner’s Office Anonymisation Code of Practice and in the Article 29 Working Party’s Opinion 03/2013 on Purpose Limitation.

Continuing this approach would introduce significant legal uncertainty for our members as it is currently not clear as to which, if any, of these provisions would apply to market, opinion and social research

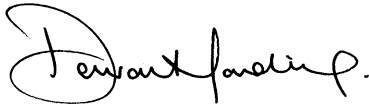
Recognising that both the Council of Ministers and the European Parliament have explored different aspects of Article 83, our own examination of the text as originally proposed by the European Commission also offers, in our view, two additional opportunities to clarify and provide greater legal certainty for market, opinion and social researchers without negating the contributions of either institution.

Article 83c could be clarified to make clear “Scientific Research” includes market social and opinion research, qualitative or quantitative, regardless of the source of funding or the status of the research provider.

Recital 126 could further be amended to cover the full breadth of research activities reflecting its important function as a necessity across all elements of commerce, democracy and society and essential for more effective evidence-based decision making in public and private organizations.

Further, Recital 126 could be clarified to allow quantitative and qualitative research using statistical or other scientific methods that do not identify individuals, unless the informed consent of the data subject has been obtained or identification is permitted by Union or Member State law.'

In order to safeguard legitimate research activities regardless of who conducts them, we would welcome the opportunity to discuss this matter with you directly and would be keen to arrange a meeting for this purpose (in Italy or in Brussels).



Debrah Harding
Vice President
EFAMRO



Kim Leonard Smouter
Government Affairs Manager
ESOMAR



Founded in 1992, EFAMRO represents the interests of market, social and opinion research in Europe. Its members are national trade associations for research businesses. For further information on EFAMRO and its activities, contact Debrah Harding, Vice President.

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Founded in 1948, ESOMAR gathers nearly 5000 professionals and over 300 companies worldwide providing or commissioning research, including public and academic bodies. For further information on ESOMAR and its activities, contact Kim Smouter, Government Affairs Manager.

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Founded in 1947, WAPOR is the international leading association in the field of public opinion research with approximately 500 members in more than 60 countries. For further information on WAPOR and its activities, contact Anne Niedermann, Chair of Standards.

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