

Market, Social, and Opinion Research Sector's Response to the Presidency's questions outlined in document 8309/15 for the DAPIX submitted 30 April 2015

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1. Recommendations

- We welcome many of the clarifications provided by the Council of Ministers strengthening the links between Article 83 and the remainder of the proposed EU GDPR to date, strengthening its associated recitals, and status as a ground for processing.
- We support further legal certainty to be provided by the proposed EU GDPR above and beyond what is currently in place in the 1995 Directive, thereby ensuring that market, social, and opinion research actors benefit from clear requirements that guides development of their evidence-based decision-making processes.
- We recommend maintaining the 1995 Directive's approach deeming historical, statistical, and scientific research is always compatible provided that appropriate safeguards are taken. These include the necessity to ensure that the research projects' results are not subsequently used for other purposes, consent of respondents is acquired before publishing results that may be attributed to them or that respondents have published their opinions to render it public themselves.
- We recommend that the chains of responsibility remain with a single controller, noting that in the use case of market, social, and opinion research this may involve a market research provider operating as a processor on behalf of the client, and with due regard to long-established legal and self-regulatory requirements governing the sector.
- We recommend that Council not consider further limitations to the Article 83 purpose as foreseen though belief that the sector would be able to comply with further stipulations limiting the processing to a "source" controller.
- We caution against adopting wording that would inevitably limit a project to one type of research, noting that many research projects may first begin as historic studies of pre-existing datasets, which are then statistically or scientifically upgraded with field data.

Accordingly, we welcomed the Council electing to maintain a single Article 83 covering historical, statistical, and scientific purposes and suggest that this ethos be maintained in the final version of the text in line with current research practice across all research fields.

- We do not support the introduction of a public interest filter; research informs decisions that all serve the public interest by ensuring that entities invest limited resources in the most cost-effective, and appropriate means available to them. Introducing a public interest bar would further raise legal uncertainty and severely constrain the applicability of these activities to legitimate economic activities supporting growth and jobs.
- We highlight that within the existing data protection framework, many of the research fields have adopted numerous self-regulatory codes, ethics boards, and other operating safeguards that enshrine the principles of “no-return path to the individual,” a strict “purpose” limitation, a strict aggregation protocol before providing results to those that commission the result unless the data subject consents otherwise or has made their data public. This has led to research continue to be a “good” citizen as regards to the collection, use, and dissemination of data in support of legitimate research activities conducted by academic and private organisations.

2. About EFAMRO and ESOMAR

- This response is submitted on behalf of EFAMRO, the European Research Federation, and ESOMAR, the World Association of Market, Social, and Opinion Research. 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.

3. Conclusion

The sector welcomes the opportunity to further cement legal certainty for actors needing the Article 83 derogations to conduct research projects that would otherwise be impossible and hopes to have provided constructive inputs to inform the DAPIX group’s deliberations. We remain at your disposal for any further inputs that you may deem appropriate at this stage of negotiations.

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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 Michelle Goddard, Director of Policy & Standards.

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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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