

EFAMRO and ESOMAR Position Paper

A Response to the European Data Protection Board's Guidelines 1/2024 on processing of personal data based on Article 6(1)(f) GDPR

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 in across Europe.¹

ESOMAR the global voice of the data, research, and insights community since 1947, gathers more than 8,000 individual and corporate members in over 130 countries. ESOMAR promotes professional and ethical standards and the value of market, opinion and social research in decision making.²

EFAMRO and ESOMAR represent the research and insights sector, accounting for a reported annual turnover of €20.87 billion in Europe.³

1. About Market, Opinion and Social Research

- 1.1. Market research is comprised of all forms of market, opinion, and social research ("Market Research").
- 1.2. Market Research is the systematic gathering and interpretation of information about individuals or organisations using the statistical and analytical methods and techniques of the applied social, behavioural and data sciences to gain insight or support decision making.
- 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 a product, business initiative, consumer or government policy strategy is often the hidden – yet defining – factor between 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.

¹ EFAMRO, <https://efamro.eu/>

² ESOMAR <https://esomar.org/>

³ ESOMAR Global Market Research Report, which includes contributions from national associations including EFAMRO members: <https://esomar.org/global-market-research-report>

2. Purpose of our Response

- 2.1. Our associations are responding to the European Data Protection Board's (EDPB's) proposed Guidelines 1/2024 on processing of personal data based on Article 6(1)(f) GDPR
- 2.2. Our associations largely support and welcome the guidance. Overall, our associations agree with the EDPB's position, and the Guidelines clarify the appropriate uses for legitimate interest in accordance with Article 6(1) of the GDPR. The Guidelines reflect careful consideration of how businesses can responsibly use personal data while upholding high data protection standards. We particularly appreciate the clarity provided with regard to the provisions concerning further processing and using legitimate interest as a mechanism for fraud-prevention.
- 2.3. We also appreciate the clarity provided for businesses generally, to the effect that Legitimate Interests can cover purely commercial interests. This is a welcome development for the research sector, and the Guidelines clarify the measure by which to assess and undertake legitimate interest appropriately and in accordance with GDPR.

3. Detailed Response

- 3.1. The Guidelines cover 'Processing for the purpose of preventing Fraud'. According to Recital 47 GDPR, data processing in the field of fraud prevention may find its legal basis in Article 6(1)(f) GDPR. This Recital clarifies that the processing of personal data strictly necessary for the purposes of preventing fraud may constitute a legitimate interest of the controller. This does not mean, however, that it is automatically possible to rely on Article 6(1)(f) GDPR as a legal basis to engage in any processing of personal data for the purpose of fraud prevention, as in order to lawfully rely on Article 6(1)(f) GDPR the envisaged processing needs to be based on an interest that is legitimate and fulfil both the necessity and balancing tests.'
- 3.2. In the research sector, legitimate interest plays a crucial role in data processing activities, particularly for fraud prevention, data authenticity and quality control. The EDPB Guidelines are encouraging and provide clarity for the research sector. The Guidelines recognize the need to balance individuals' rights with the broader public interest in maintaining trustworthy data practices, including upholding data minimization and storage limitation requirements. Fraud prevention is critical in the research sector, because accurate, high-quality data forms the foundation of valuable insights and credible research solutions that benefit decision-makers in all spheres of society.

- 3.3. On the practical side, the only means to ensure high quality research data is to undertake large-scale data quality processing activities. In this way the data can be rigorously tested and checked for quality standards. Therefore, the EDPB's clear recognition that fraud prevention constitutes a legitimate interest – provided appropriate safeguards are employed – is an essential clarification for the research sector. Undetected fraudulent data is a significant impediment to producing high quality insights and producing robust and evidence-based decisions. If businesses are able to consider legitimate interest within the context of fraud, provided they meet the relevant criteria, this would enable businesses to protect and produce better quality insights and support the integrity of research, which is based on robust evidence, and confidentiality.
- 3.4. We also value the emphasis and clarity on proportionality and the necessity of implementing safeguards to protect individuals' rights. The guidelines on transparency, data minimization, and regular review will be instrumental as the sector continues to develop robust protocols for fraud prevention (for which legitimate interest plays an important role) that align and adhere to GDPR provisions and principles. As aforementioned, the research sector is based on data integrity and confidentiality. Therefore, we continue to be committed to respecting the privacy and fundamental rights of individuals, while achieving fraud prevention objectives.
- 3.5. Additionally, the Guidelines provide clear direction with regard to further processing provisions. The EDPB's acknowledgment of further processing under legitimate interest, provided it meets transparency, proportionality, and data subject rights requirements, aligns with the research sectors' ethical standards, and forms best practice for the sector. It is typical in research to undertake further processing on pseudonymized or aggregated data to generate valuable, non-intrusive insights that inform business decisions, guide public policy, and improve products and services without compromising individual privacy. The EDPB Guidelines affirm that such processing, when conducted responsibly, are in accordance with GDPR provisions.
- 3.6. In particular, the clear delineation in the Guidelines on when and how further processing can occur is a welcome development. The guidance provides a framework which enables research practitioners to responsibly use data collected for one purpose in a compatible, secondary context, provided it does not adversely affect data subject rights. This flexibility is critical in market and social research, as it enables insights to be repurposed for additional analyses, trend identification, and research validation, all of which contribute to data accuracy and reliability in findings.
- 3.7. Overall, our associations support and appreciate the clarity the Guidelines provide. The Guidelines emphasise a considerate and clear balance between data protection and empowering organisations to make responsible decisions, whilst respecting the fundamental rights and privacy of individuals.
- 3.8. EFAMRO and ESOMAR acknowledge and support the proposed Guidelines, and we would welcome the opportunity to engage further the EDPB Guidelines on processing of personal data based on Article 6(1)(f) GDPR.
- 3.9. To contact us for more information:
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