Opinion of the ADM on the

Evaluation of the General Data Protection Regulation

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According to Article 97(1) of the General Data Protection Regulation[1], the European Commission is required to submit to the European Parliament and the Council of the European Union a report on the evaluation and review of the General Data Protection Regulation, which must also be publicly accessible, by 25 May 2020, i.e. four years after the GDPR came into force, and every four years thereafter. In this context, Article 97(2) GDPR states that the European Commission must examine, in particular but not exclusively, the application and functioning of Chapter V on the transfer of personal data to third countries or international organisations as well as Chapter VII on cooperation and consistency.

Introduction

In reviewing and evaluating the General Data Protection Regulation, the European Commission must, according to Article 97(4) GDPR, take into account not only the positions and findings of the European Parliament and of the Council of the European Union, but also the positions and findings of other relevant bodies or sources. On the one hand, this provision gives the European Commission considerable freedom in deciding which facts and information it wishes to take into account in its review and evaluation of the General Data Protection Regulation.[2] On the other hand, this imposes the obligation on the European Commission to also take into account reports, expert assessments and opinions presented by institutions of civil society and trade associations.[3]

Article 97(5) GDPR states that the European Commission shall, if necessary as a result of the evaluations and reviews, submit appropriate proposals to amend the General Data Protection Regulation. In doing so, it must "in particular [take into account] developments in information technology and […] the state of progress in the information society". Particularly the focus on the developments in information technology points to the special role played by professional and trade associations, since they have the expertise that is necessary in order to judge the developments in information technology in their respective industry and the potential impact on the protection of

[1] Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

[2] Cf.: Ehmann, Eugen / Selmayr, Martin; 2017: Datenschutz-Grundverordnung. C.H.BECK Publishing Company, Munich. p 1206

[3] Cf.: Gola, Peter; 2018: Datenschutz-Grundverordnung – Kommentar. C.H. BECK Publishing Company, Munich. 2nd Edition, p 1033

natural persons in relation to the processing of personal data. The industry associations are politically obliged to provide their specific expert opinions proactively to contribute to the evaluations and reviews of the General Data Protection Regulation, and to view this as a "duty" owed to the European Commission.

Focus and aims of the opinion of the ADM

The evaluation of the General Data Protection Regulation prescribed by Article 97 GDPR gives the ADM Arbeitskreis Deutscher Markt- und Sozialforschungsinstitute e.V.[4] the opportunity as well as the obligation, as the trade association for market, opinion and social research agencies in Germany, to take action in the context of its representation of the political interests of the industry. This holds true despite doubts expressed in the German legal commentaries[5] as to whether or not the upcoming review and assessment of the General Data Protection Regulation and the subsequent evaluation will lead to anything more than "marginal corrections". An important role is played in this context by the apt remark of the authors of an expert report commissioned by Bündnis 90/Die Grünen on the implementation of the General Data Protection Regulation6 noting that a serious evaluation of its implementation is not yet possible one year after the applicability of the legal provisions of the General Data Protection Regulation.

For private-sector market, opinion and social research agencies and the other research service providers in the industry – the latter are in particular so-called "field service providers", which are involved in collecting the research data – being addressees and practitioners of the provisions of the General Data Protection Regulation, the rules codified in Chapters V and VII of the General Data Protection Regulation, though also relevant, are less important to the industry than the central provisions of Chapter II on the data-protection-related principles of processing personal data, of Chapter III on the rights of the data subject and of Chapter IV on controllers and processors.[7]

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[4] The appendix contains a brief description of the ADM as well as it main duties and aims.

[5] Cf.: Sydow, Gernot (Ed.); 2017: Europäische Datenschutzgrundverordnung – Handkommentar. Nomos Verlagsgesellschaft, Baden-Baden. p 1394

[6] Cf.: Schaar, Peter; Dix, Alexander (2019): Datenschutz im digitalen Zeitalter: Umsetzung der Datenschutzgrundverordnung (DSGVO) – Bilanz ein Jahr nach Inkrafttreten. Expert report drawn up on behalf of the Bündnis 90/Die Grünen parliamentary group in the German Bundestag. p 3

[7] This assessment is the result, among other things, of opinions collected by the ADM among its member agencies with regard to possible problems in applying the legal provisions of the GDPR.

Chapter II GDPR: Principles

In Article 5(1)(b) GDPR, the General Data Protection Regulation contains a fundamental permissive rule allowing personal data collected for specified, explicit and legitimate purposes to be further processed for scientific research purposes, because these are not considered to be incompatible with the initial purposes. According to Article 89(1) GDPR, further processing of personal data for scientific research purposes shall be subject to appropriate safeguards for the rights and freedoms of the data subjects.

In contrast to the permissive rule for the further processing of personal data for scientific research purposes, the General Data Protection Regulation does not contain a comparable privileged treatment of the processing for scientific research purposes. The legal provisions of Article 89 GDPR contain a range of measures to facilitate the processing of personal data – among other things – for scientific research purposes, but no legal permissive rule. In the absence of a corresponding specific permissive rule, it is therefore necessary to draw on the general legal requirements normalized in Article 6(1) GDPR when assessing the permissibility of concrete processing situations.

In market, opinion and social research, it is primarily the consent of the data subjects, legally normalized in Article 6(1)(a) GDPR, and the protection of the legitimate interests pursued by the research agency as the controller or the client as a third party, normalized in Article 6(1)(f) GDPR, that can be treated as constituting general legal requirements permitting personal data to be processed. The latter permissive rule always calls for a weighing up of interests between the research interests of the controller and the protection of the privacy of the data subjects. The necessity for the performance of a contract normalized in Article 6(1)(b) GDPR as a legal requirement for processing personal data is only relevant in market, opinion and social research in connection with organising a so-called access panel; the latter is defined as a *"database for drawing samples of potential respondents who have expressed their willingness to take part in future data collection activities should they be selected"*[8].

Processing personal data for scientific research purposes is subject to strict professional ethical principles and requirements in terms of research methods, as part of the self-regulation of science and research. A legal privilege of this processing purpose that includes these self-regulatory requirements for the permissibility of processing personal data for scientific research purposes in the corresponding legal rules, offers two advantages: Firstly, it helps to ensure that empirical scientific research can

[8] Cf.: DIN SPEC 91368:2017-12 Stichproben für wissenschaftliche Umfragen der Markt-, Meinungs- und Sozialforschung – Qualitätskriterien und Dokumentationsanforderungen. p 9

(continue to) be carried out in a European research area on a high qualitative level, in accordance with Article 179(1) TFEU9. Secondly it strengthens those rights of persons taking part in a scientific research study that are already codified in codes of conduct. In the case of market, opinion and social research, these are the anonymisation of the research data at the earliest possible time ("requirement of anonymisation") and the strict separation of research and other activities ("requirement of separation").[10]

The ADM therefore recommends to amend the legal requirements permitting personal data to be processed, as normalized in Article 6(1) GDPR, by an explicit permissive rule allowing the processing of personal data for scientific or historic research purposes, or for statistical purposes, including the above-named conditions. This should be done in the form of an additional point (g):

> g) die Verarbeitung dient ausschließlich wissenschaftlichen oder historischen Forschungszwecken oder statistischen Zwecken, und die Verarbeitung unterliegt geeigneten Garantien für die Rechte und Freiheiten der betroffenen Person, und der Grundsatz der Datenminimierung wird beachtet.
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> g) processing is used solely for scientific or historical purposes or statistical purposes and the processing shall be subject to appropriate safeguards for the rights and freedoms of the data subject and the principle of data minimisation will be observed.

Chapter III GDPR: Rights of the data subject

The willingness of as large a proportion as possible of those persons selected to participate in a scientific research study and their correct responses to the questions asked in an interview are essential preconditions for the high scientific quality of the research results in market, opinion and social research. Accordingly, the observance of the rights of data subjects codified in Articles 12 to 23 of Chapter III of the General Data Protection Regulation, has already for many years been binding

[9] Cf.: Treaty on the Functioning of the European Union (consolidated version published in the Official Journal of the European Union, No. C 115 of 9/5/2008, p 47)

[10] Cf. for Germany, for example: ADM, ASI, BVM, DGOF; 2017: Declaration for the Territory of the Federal Republic of Germany regarding the ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics ("German Declaration")

research practice as part of the professional code of conduct, due to the professional ethical and research methodological responsibilities of market, opinion and social research.

The willingness of the population to take part in scientific research studies within market, opinion and social research is crucially determined, among other things, by the persons invited to take part having absolute trust that their rights and interests are safeguarded when their personal data is processed for scientific research purposes. This necessary trust can as a rule only be established if the data subjects are comprehensively informed about the research agency conducting the scientific investigation and – where methodologically possible – about the processing of their personal data for scientific research purposes, and this must occur at the latest when data collection commences.

For this reason, the duty to provide certain information to data subjects, as legally normalized in Article 13(1) GDPR, is not a "bureaucratic obstacle" to carrying out scientific studies in market, opinion and social research, but rather a "confidence-building measure" that increases the necessary willingness of the population to participate in research. The comprehensive duty to provide information to the participants in scientific investigations in market, opinion and social research has therefore been codified for many years both in the professional ethical codes of conduct and in the research methodological quality standards of the industry.

A source of some uncertainty in market, opinion and social research does however exist concerning the duty to provide further information to data subjects as legally normalized in Article 13(2) GDPR. To some extent, this uncertainty reflects the different positions adopted in the German legal commentaries on Articles 13(1) and 13(2) GDPR: On the one hand, it is argued that the six categories of information normalized in Article 13(1) GDPR should always be provided to the data subjects, whereas the additional six categories normalized in Article 13(2) should only be provided as necessary, depending on the situation, to ensure that the personal data in question is processed fairly and transparently.11 This view is based on the wording of Recital 60 GDPR ("[…] The controller should *provide the data subject with any further information necessary to ensure fair and transparent processing taking into account the specific circumstances and context in which the personal data are processed. […]")* and on the fact that the draft by the Council of the European Union[12] originally used a similar wording.

[11] Cf.: Ehmann, Eugen / Selmayr, Martin; 2017: Datenschutz-Grundverordnung. C.H.BECK Publishing Company, Munich. p 401

On the other hand, the majority of the German legal commentaries argue that the information normalized in Article 13(2) GDPR is not less essential for data subjects than the information normalized in Article 13(1) GDPR. For this reason, it is argued, controllers must fulfil their duty to provide information, as required by Article 13(1) and 13(2) GDPR, equally and in full.13 The way the categories of information are distributed between the two paragraphs does not, it is argued, lead to any factual differences. Furthermore, the demand for "fair and transparent processing" is said not to be a distinguishing feature, but instead "hovers" over the entire General Data Protection Regulation as a basic principle when processing personal data.[14]

In line with the latter argument, the ADM holds the opinion that the large number of types of information that is to be provided to data subjects according to Article 13(1) and (2) GDPR, falls short of safeguarding the fundamental rights and freedoms of natural persons, whose protection is the purpose of the General Data Protection Regulation. There is a danger that the abundance of information could itself make the relevance of the individual categories of information less recognisable for the data subjects, with regard to their rights, freedoms and interests, thereby forfeiting the goal of the informed consent.

By contrast, distinguishing between basic information, which should be provided to the data subjects in every case at the start of collecting their personal data, and additional information, which should be provided to the data subjects depending on the processing context or when specifically requested and which must in every case be available on request, would increase the transparency of processing personal data for the data subjects themselves as well as meeting the practical research requirements of data processing.

[12] Cf.: Council of the European Union; 11 June 2015: Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) – Preparation of General Direction

[13] Cf.: Kühling, Jürgen / Buchner, Benedikt; 2018: Datenschutz-Grundverordnung, Bundesdatenschutzgesetz – Kommentar. C.H.BECK Publishing Company, Munich. Second edition, p 385

[14] Cf.: Gola, Peter; 2018: Datenschutz-Grundverordnung – Kommentar. C.H.BECK Publishing Company, Munich. Second edition, p 411

The ADM therefore recommends modifying Article 13(2)(1) GDPR as follows:

> (2) Zusätzlich zu den Informationen gemäß Absatz 1 stellt der Verantwortliche der betroffenen Person zum Zeitpunkt der Erhebung dieser Daten folgende weitere Informationen zur Verfügung, **wenn** die**se** notwendig sind, um eine faire und transparente Verarbeitung zu gewährleisten**, oder von der betroffenen Person nachgefragt werden**: […]
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> (2) In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information **if these are** necessary to ensure fair and transparent processing **or are requested by the data subject**: […]

This clarifying modification should be associated with a review of the allocation of the individual categories of information either to Paragraph 1 (basic information) or to Paragraph 2 (additional information) and potentially with a corresponding reassignment.

Chapter IV GDPR: Controller and processor

European data protection laws assume a broad interpretation of the term "research". This is clear from Recital 159 GDPR: *"[…] For the purposes of this Regulation, the processing of personal data for scientific research purposes should be interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research. […]"* In the German legal commentaries, the predominant opinion is that market, opinion and social research is covered by this legal definition of "research".[15]

The decision to use suitable methods and techniques solely on the basis of the interests of scientific knowledge and of scientific aims is one of the indispensable features of empirical scientific research, irrespective of whether it is fundamental research, applied research or privately funded research. In terms of data protection legislation, this includes the decision about the purposes and means of processing personal data for scientific research purposes, which is based solely on research-related criteria.

[15] For further details, cf. Simitis, Spiros / Hornung, Gerrit / Spiecker, Indra (Ed.); 2019: Datenschutzrecht – DSGVO mit BDSG. Nomos Verlagsgesellschaft, Baden-Baden. p 536ff

Conducting scientific studies in market, opinion and social research is a complex process made up of many different consecutive steps. How these are designed, in terms of scientific theory and research methodology, is decided by the research agency conducting the study, which is therefore as a rule to be considered the controller for processing the personal data of the persons taking part in the scientific research study, in terms of data protection laws. However, this does not rule out the research agency or some other research service provider being involved in conducting a scientific study in market, opinion and social research as a processor, if the agency or other service provider processes personal data – usually collecting research data as a so-called "field service provider" – on behalf of and on the instructions of the research agency in charge.

The ADM recommends a clarification in the Recitals of the General Data Protection Regulation, indicating that when personal data is processed for scientific or historical research purposes or for statistical purposes, the bodies or institutions doing so are as a rule acting as controllers or joint controllers, because the decisive distinction in substance as to the purposes and means of processing personal data by the institution or other body carrying it out is inherent to scientific and statistical activities. This clarification could take place in an additional Recital 33a:

> (33a) Einrichtungen oder andere Stellen, die eine wissenschaftliche Untersuchung durchführen und dabei personenbezogene Daten zu wissenschaftlichen oder historischen Forschungszwecken oder zu statistischen Zwecken verarbeiten, treffen dabei in der Regel auch die inhaltlichen Entscheidungen über die Zwecke und Mittel der Verarbeitung. Sie sollten deshalb für die entsprechende Verarbeitung Verantwortliche oder gemeinsam Verantwortliche sein. Das schließt nicht aus, dass diese Einrichtungen oder anderen Stellen als Auftragsverarbeiter an der Durchführung einer wissenschaftlichen Untersuchung beteiligt sind und personenbezogene Daten nach den Anweisungen des Verantwortlichen oder der gemeinsamen Verantwortlichen verarbeiten.
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> (33a) Agencies or other bodies which conduct a scientific study and thereby process personal data for scientific or historical research purposes or statistical purposes thereby usually also determine the substantive purposes and means of the processing and therefore should be controller or joint controller. This does not rule out these agencies or other bodies participating in conducting a scientific study as processors and processing personal data according to the instructions of the controller or joint controller.

Chapter V GDPR: Transfers of personal data to third countries or international organisations

According to internationally generally recognised and binding professional codes of conduct within the industry, the personal data that is processed for scientific research purposes in market, opinion and social research must only be transferred to the client or clients of a scientific research study and to third parties in a form in which the participants in an investigation cannot be identified. This professional "requirement of anonymisation" is an expression of both professional ethical responsibility and of research-methodological requirements in market, opinion and social research. In general, the "requirement of anonymisation" restricts the transfer of personal data to the exceptional instances described below. These apply equally to transfers within the territory of a member state of the European Union, to transfers within the European Union and to transfers to third countries.

To the extent that research data is transferred in a personalised form in market, opinion and social research, such transfers occur exclusively between research agencies that are either collaborating as joint controllers or else on behalf of a controller in carrying out a scientific research study, and they exclusively serve scientific research purposes. In market, opinion and social research, personal research data is primarily transferred for scientific research purposes when research agencies are cooperating to carry out complex or extensive scientific research studies, or when external research service providers are commissioned with carrying out individual steps of the research process. In market, opinion and social research, the latter concerns the collection of research data, in particular, i.e. so-called "fieldwork", and, in connection with the digitalisation of research, increasingly also the "hosting" of research data.

On principle, the legal provisions for the transfer of personal data to third countries or to international organisations as codified in the individual legal provisions of Chapter V of the General Data Protection Regulation – adequacy decision of the European Commission, appropriate safeguards of controller or processor, binding corporate rules, derogations for specific situations such as explicit consent by the data subjects – are all relevant to market, opinion and social research. In future, the approved codes of conduct legally normalized in Article 46(2)(e) GDPR for the proper application of the General Data Protection Regulation pursuant to Article 40 GDPR will play a more important role in market, opinion and social research as the legal foundation for transferring personal data to third countries on account of its increasing internationalisation. Different national as well as the transnational industry associations are currently working on developing industry-specific codes of conduct, which will also

contain legally binding and implementable safeguards for the rights and freedoms of data subjects when transferring personal data to third countries or international organisations.

In connection with the transfer of personal data to third countries and international organisations, it should be checked whether and in what form the legal provisions on the permissibility of transfers for scientific research purposes need to be put in concrete terms and thereby made more precise, so as to allow for the increasing internationalisation of empirical scientific research – including market, opinion and social research – and the needs associated with this, while at the same time maintaining the high level of protection guaranteed by European data protection legislation to the rights and freedoms of the data subjects affected by such a transfer outside the European Union too.

The legal provisions of Article 89 GDPR contain no independent permissive rule for processing personal data for scientific research purposes, however they do include various facilitations of legal processing, though only in the form of general instructions. Aside from the processing being necessary in order to achieve the specific research purposes, a further requirement for the admissible exercising of these facilitations is that the rights and freedoms of the data subjects affected by such processing on account of taking part in a scientific investigation should be observed by means of suitable technical and organisational security measures. This is intended to safeguard, in particular, the principle of data minimisation standardised in Article 5(1)(c) GDPR. In this connection, explicit reference is made to the measure of pseudonymising the personal data.

Processing personal data in a pseudonymised form for scientific research purposes is undoubtedly a measure that can contribute to safeguarding the rights and freedoms of data subjects. However, this is only one possible measure from a catalogue of technical and organisational security measures for protecting the rights and freedoms of data subjects, which can be used when processing personal data for scientific research purposes. In many disciplines of empirical scientific research, the specific technical and organisational security measures are codified in the professional and research-ethical codes of conduct of their specific system of self-regulation.[16]

For this reason, the ADM recommends that the legal provisions of Article 89 GDPR should to be amended by an additional Paragraph 1a, in which the voluntary commitment of controllers and processors to adhere to approved codes of conduct according to Articles 40 and 41 GDPR and their

[16] The appendix contains a brief presentation, focussing on Germany, of the self-regulation system in market, opinion and social research.

monitored compliance are standardised and privileged as a suitable guarantee of the rights and freedoms of data subjects when their personal data is processed for the purpose of scientific research:[17]

> (1a) Die freiwillige Verpflichtung eines Verantwortlichen oder Auftragsverarbeiters auf genehmigte Verhaltensregeln gemäß Artikel 40 zusammen mit der überwachten Einhaltung der Verhaltensregeln gemäß Artikel 41 gilt als geeignete Garantie für die Rechte und Freiheiten der betroffenen Person gemäß dieser Verordnung.
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> (1a) The voluntary commitment of a controller or processor on an approved code of conduct according to Article 40 together with the supervised observance of the code of conduct in accordance with Article 41 shall be considered as appropriate safeguards for the rights and freedoms of a data subject in accordance with this Regulation.

Chapter VII GDPR: Cooperation and consistency

The activities deriving from the genuine goals and tasks of a trade association like the ADM demand cooperation with the supervisory authority, under a variety of aspects. Special emphasis is placed in this respect on the preparation and monitoring of professional codes of conduct for the proper application of the legal provisions of the General Data Protection Regulation and, in this connection, specifying the rights of the industry-specific processing operations for the personal data of data subjects and the corresponding duties of the controllers and processors, as legally normalized in Articles 40 and 41 GDPR. In connection with the cooperation between a trade association and the supervisory authority, the question of the competence of a particular supervisory authority is non-trivial.

According to Article 55(1) GDPR, each supervisory authority shall be competent for the performance of the tasks assigned to and the exercise of the powers conferred on it on the territory of that member state within the European Union. The General Data Protection Regulation does not contain any rules

[17] On 20 August 2019, the ADM submitted a draft for "Codes of conduct for the proper application of the General Data Protection Regulation in market, opinion and social research" to the Berlin Representative for Data Protection and Freedom of Information as the competent supervisory authority for approval in accordance with Article 40(5) GDPR.

for the geographic delimitation of such competence within a member state. Since the ADM is a trade association for private-sector market, opinion and social research agencies and as such does not itself process any personal data for scientific research purposes, but in the context of its professional regulatory competencies has considerable influence on the arrangements for the industry-specific processing of personal data for scientific research purposes at its member agencies, which are spread out across the entire territory of the Federal Republic of Germany, there is a practical significance to the question as to which supervisory authority is in fact competent for it as a national trade association. Both for substantial and for pragmatic reasons, the competence of the supervisory authority for associations and other institutions representing categories of controllers or processors can only be determined by where those associations or other institutions are legally registered.

The question of which supervisory authority is competent with respect to a national association concerns the member states of the European Union to an equal degree if – as in the Federal Republic of Germany – they have established a regional competence structure of the national supervisory authorities within their respective territory. It concerns transnational associations and other institutions in the same way. For this reason, the question of the supervisory authority that is competent for the associations and other institutions that represent categories of controllers and processors should be explicitly clarified in the Recitals of the General Data Protection Regulation. This can either be achieved by an additional Recital 122a (or by integrating this aspect in the existing Recital 122):

> (122a) Die Zuständigkeit der Aufsichtsbehörde für Verbände und andere Vereinigungen, die Kategorien von Verantwortlichen oder Auftragsverarbeitern vertreten, sollte sich nach dem vereinsrechtlichen Sitz des jeweiligen Verbandes oder der anderen Vereinigung bestimmen. Dieser Grundsatz sollte gleichermaßen für nationale und transnationale Verbände und andere Vereinigungen gelten.
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> (122a) The competence of the supervisory authority for associations and other bodies representing controllers and processors should be determined by the legal seat of the respective association or other body. This principle should apply equally to national and transnational associations and other bodies.

Summary

In the context of the evaluation and review of the General Data Protection Regulation by the European Commission by 25 May 2020, in accordance with Article 97(1) GDPR, the ADM believes that the following aspects, in particular, should be reviewed and where necessary suitable amendments to or modifications of the corresponding data protection provisions should be proposed:

1. The legal requirements for processing personal data, as legally normalized in Article 6(1) GDPR, ought to be amended by an explicit legal rule permitting such use for scientific or historic research purposes, or for statistical purposes. In doing so, it is necessary to take into account the strict professional ethical principles and the demands of the research methodology, both of which limit the permissibility of processing such data, and which are already codified in the self-regulation of research.
2. A distinction ought to be made in the categories of information that are to be communicated to data subjects when their personal data is processed, in accordance with Article 13(1) and 13(2) GDPR, between basic information and additional information. Basic information must always be provided, whereas additional information must only be provided facultatively when necessary in order to permit the personal data to be processed fairly and transparently.
3. The recitals ought to make it clear that conducting scientific studies (in market, opinion and social research) and processing personal data in this connection are activities in which the research agencies conducting the investigations are as a rule responsible as controllers in terms of data protection laws. They are only processors if they carry out the individual research steps according to the instructions of the controller.
4. The legal provisions of Article 89 GDPR ought to be amended by an additional paragraph, in which the voluntary commitment of controllers and processors to adhere to approved codes of conduct according to Articles 40 and 41 GDPR and their monitored compliance are legally normalized and privileged as a suitable guarantee of the rights and freedoms of data subjects when their personal data is processed for the purpose of scientific research.
5. The recitals ought to clarify that the competence of the supervisory authority for national and transnational associations and other institutions representing categories of controllers or processors is determined by where those associations or other institutions are legally registered.

Berlin, 20 November 2019

Appendix:

The ADM Arbeitskreis Deutscher Markt- und Sozialforschungsinstitute e.V. represents the private-sector market and social research agencies in Germany. It was established in 1955 and is the only trade association of its kind. At the time of writing, 73 agencies are members of the ADM, together accounting for some 83 percent of turnover on the German market for market, opinion and social research (2.36 bn € in 2018). According to its statutes, the duties of the ADM include preserving and promoting the scientific nature of market and social research, ensuring the anonymity of individuals participating in scientific research studies, and developing codes of professional conduct and canons of professional ethics. (www.adm-ev.de)

The industry associations for market, opinion and social research in Germany[18] have developed a comprehensive **system of self-regulation**, which codifies both the professional ethical principles and the research methods of the industry. The centrepiece of this system is the "ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics", which is accepted by many national associations throughout the world. Germany's industry associations have adopted the "ICC/ESOMAR Code" prefaced by a "Declaration for the Territory of the Federal Republic of Germany". The various guidelines published by the German industry associations put the professional ethical principles of market, opinion and social research that are codified in the Code and the "German Declaration" in a more concrete form for individual research areas or research methods.

[18] ADM Arbeitskreis Deutscher Markt- und Sozialforschungsinstitute e.V.; Arbeitsgemeinschaft Sozialwissenschaftlicher Institute e.V. (ASI); BVM Berufsverband Deutscher Markt- und Sozialforscher e.V.; Deutsche Gesellschaft für Online-Forschung – DGOF e.V.