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edpb

European Data Protection Board

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## Reply to public consultation - Guidelines 07/2020

Dear Sir or Madam,

We are very grateful for the opportunity to participate in the public consultation on the “Guidelines 07/2020 on the concepts of controller and processor in the GDPR”. Please allow us before to briefly introduce the ADM to you:

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, 70 research agencies are members of the ADM, together accounting for some 83 percent of turnover on the German market for market, opinion and social research (2.3 bn € in 2020). 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 ethics and standards of research methodology.

The ADM generally agrees with the arguments and explanations laid down in the EDPB Guidelines 07/2020. However, from our point of view the example “market research” in point 42 might lead to some relevant misunderstandings regarding the nature of market, opinion and social research and the characteristics of processing the corresponding research projects. Therefore, we have focused the chapters below on the example “market research” in point 42 of the EDPB Guidelines 07/2020. To illustrate why we consider the example “market research” in point 42 to be misleading we have commented on it in very detail and have made detailed suggestions to modify the example in a way to meet the nature and characteristics of the vast majority of market, opinion and social research projects. We have visualized our comments and suggestions in italic.

## 1. General Comment on the Example

Company ABC wishes to understand which types of consumers are most likely to be interested in its products and contracts a service provider, XYZ, to obtain the relevant information.

Company ABC instructs XYZ on what type of information it is interested in and provides a list of questions to be asked to those participating in the market research.

Company ABC receives only statistical information (e.g., identifying consumer trends per region) from XYZ and does not have access to the personal data itself. Nevertheless, Company ABC decided that the processing should take place, the processing is carried out for its purpose and its activity and it has provided XYZ with detailed instructions on what information to collect. Company ABC is therefore still to be considered a controller with respect of the processing of personal data that takes place in order to deliver the information it has requested. XYZ may only process the data for the purpose given by Company ABC and according to its detailed instructions and is therefore to be regarded as processor.

*This fictional example is only true for a small number of market, opinion and social research projects. The vast majority of research projects is completely different from this example regarding the knowledge, skills and experiences of clients and research service providers on the one hand and the complimentary roles of both on the other hand. This applies equally to all kinds of projects in market, opinion and social research – quantitative and qualitative research projects, ad hoc and longitudinal research studies etc. According to the broad legal definition of the term ‘scientific research’ in Recital 159 of the GDPR the market, opinion and social research is applied scientific research. It applies the various theoretical concepts as well as the different empirical methods of the behavioral, economical, and social sciences.*

## 2.1. First Sentence of the Example

Company ABC wishes to understand which types of consumers are most likely to be interested in its products and contracts a service provider, XYZ, to obtain the relevant information.

*To understand which types of consumers are most likely to be interested in a company's products is a typical business problem which can be solved by empirical information obtained by market research. However, already the development of the necessary typology of consumers and the corresponding so-called numerical classification of them are scientific procedures which requires scientific knowledge, skills, and experiences.*

## 2.2. Second Sentence of the Example

Company ABC instructs XYZ on what type of information it is interested in and provides a list of questions to be asked to those participating in the market research.

*Usually the research service provider XYZ develops a theoretical approach regarding company ABC's business problem to identify the type of information that is scientifically relevant to solve the underlying business problem, not vice versa. And it is the research service provider which develops and provides to the client company ABC the corresponding list of questions to be asked. The development of a research questionnaire with formulated questions is a scientific activity based on theoretical concepts of the behavioral sciences as well as on methodological and statistical requirements.*

## 2.3. Third Sentence of the Example

Company ABC receives only statistical information (e.g., identifying consumer trends per region) from XYZ and does not have access to the personal data itself.

*The requirement to safeguard the respondents' anonymity towards clients and other third parties is one of the internationally accepted key principles of professional self-regulation in market, opinion and social research. Additionally, it is one of the efficient measures in market, opinion and social research to protect the legitimate rights and interests of the respondents in research projects as laid down in the GDPR. The classification of the client of a research project as the controller would undermine the professional principle of anonymization and would significantly complicate the legitimate rights and interests to be exercised by the respondents.*

## 2.4. Fourth Sentence of the Example

Nevertheless, Company ABC decided that the processing should take place, the processing is carried out for its purpose and its activity and it has provided XYZ with detailed instructions on what information to collect.

*Company ABC did not decide on the concrete scientific research purposes and means regarding the processing of personal data that should take place. It decided that the research project as such is to be conducted since it has commissioned the project and finances it. The concrete scientific research purposes for which personal data are processed have been developed by the market research service provider XYZ based on the underlying company's business problem. And the company ABC has not provided the research service provider XYZ with detailed instructions on what information to collect. But, vice versa, the research service provider has developed a theoretical concept on what information is relevant regarding the Company ABC's business problem and therefore shall be collect.*

## 2.5. Fifth Sentence of the Example

Company ABC is therefore still to be considered a controller with respect of the processing of personal data that takes place in order to deliver the information it has requested.

*Company ABC cannot be considered a controller with respect of the processing of personal data that takes place within the market research project since it has not requested for concrete research findings but has asked for information to solve a certain business problem.*

## 2.6. Sixth Sentence of the Example

XYZ may only process the data for the purpose given by Company ABC and according to its detailed instructions and is therefore to be regarded as processor.

*The research service provider XYZ does not process the data for the purpose given by Company ABC and according to its detailed instructions. Quite the contrary, the research service provider transforms the company's business problem into a theoretical scientific research approach with a certain freedom of choice within scientific methodology. Subsequently it deduces empirical hypotheses from the chosen epistemological approach which can be tested and validated. Thereafter the research service provider defines the target group, draws the sample, collects the research data and analyzes the empirical research findings to detect correlations and causalities in the data. These all are scientific activities which are not based on external instructions. The research service provider therefore cannot be regarded as processor but it must be seen as controller.*

### 3. Proposed Modifications of the Example

*Company ABC wishes to understand which types of consumers are most likely to be interested in its products and contracts a market research service provider, XYZ, to obtain the relevant information.*

*The market research service provider XYZ explains and delivers to company ABC a theoretical concept what kind of information is scientifically relevant to understand consumers' behavior and provides a questionnaire to be completed by those participating in the market research to collect the personal research data as the corresponding empirical information.*

*Company ABC receives only statistical information (e.g., identifying consumer trends per region) from XYZ and does not have access to the personal data itself. Company ABC neither decides in concrete on the development of the scientific research approach and the research methods and techniques nor on the corresponding processing of personal research data. But it decides on the research proposal made by the research service provider in general as well as on commissioning and financing of the market research project as such. Company ABC therefore cannot be considered a controller with respect to the concrete research purposes and means of processing the personal research data but as a recipient of the anonymized research findings. The research service provider XYZ may process the personal data according to scientific research purposes and research means it has decided and developed upon itself and is therefore to be regarded as controller.*

With these modifications of the example it covers the vast majority of market, opinion and social research projects commissioned by private and public sector clients and conducted by private and public research agencies and institutions.

### 4. Additional Comments

*From the legal perspective of data protection law the conducting of a market, opinion and social research project can be considered a subsequent sequence of processing procedures of personal data. This so-called research chain can lead to a situation where in certain research projects the client may be the controller regarding a certain research step, i.e. this single processing procedure. In other research projects a research service provider other than the controller may be a processor regarding single research steps.*

*In some market research projects the client delivers the contact details (postal addresses, telephone numbers or email addresses) of potential respondents to the research service provider for further processing. In these cases the client is fully responsible for this first research step and therefore has to be considered as controller. However, this apply to this first research step only. For all subsequent steps of the research chain the research service provider remains to be the controller.*

*In some market, opinion and social research projects the controller of the research project, i.e. the research service provider, commissions another research service provider to collect the personal research data or to analyze the research data statistically. In these cases the second research service provider works according to detailed instructions of the controller only. It has to be considered therefore as a processor.*

## 7. Final Remark

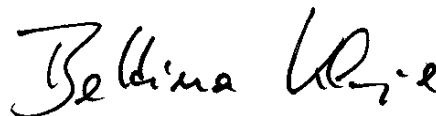
We suggest the example “market research“ in point 42 of the Guidelines 07/2020 to be modified according to our comments laid down and explained in the chapters above to avoid relevant misunderstandings regarding the nature of market, opinion and social research and the characteristics of processing the corresponding research projects.

Finally, we would like to once again express our gratitude for being given the opportunity to comment on the “Guidelines 07/2020“. If you have any questions or require further information, we will of course be happy to assist you.

Kind regards



Bernd Wachter  
Chairman



Bettina Klumpe  
Managing Director