

## **EFAMRO and ESOMAR joint statement on the European Data Protection Board guidelines 05/2021**

*on the Interplay between the application of Article 3 and the provisions on international transfers as per Chapter V of the GDPR*

The global revenue of the research, analytics and insights industry currently exceeds US\$ 89.750 billion<sup>1</sup>, with North America generating the largest share of research revenue, representing 54 percent of the total, followed by Europe with 23 percent. Research activities consist in gathering information about markets in which an organization sells their products and/or services and often include detailed qualitative understandings of consumer attitudes and preferences through tools such interviews, surveys, and increasingly big-data analytics. Many research and analytics providers subscribe to established self-regulation schemes that enable panel members and passive participants to enforce their rights. These are built on established international standards set forth by the ICC/ESOMAR International Code and national codes across many EU countries.

**ESOMAR** is the global voice of the research, analytics and insights community, speaking on behalf of over 5000 individual professionals and 750+ companies who provide or commission research, analytics and insights in more than 130 countries. All community members agree to uphold the ICC/ESOMAR International Code. Together with national and international research associations, ESOMAR sets and promotes professional standards and self-regulation for the sector and elevates the value of research, analytics and insights in illuminating real issues and bringing about effective decision-making.

**EFAMRO** represents the interests of market, social and opinion research in Europe. Its members are national trade associations for research businesses across 14 countries. EFAMRO's objectives are to represent the common interests of its members at European and international level; maintain and improve the reputation of market, opinion and social research to the public; develop and establish international quality standards for market, opinion and social research; develop, maintain and enforce international professional principles and rules which are mandatory for the members of the Federation; combat unfair trading and support members and other national associations in the field of market, opinion and social research by providing corresponding information and services. With this statement, we wish to express our gratitude to the European Data Protection Board (EDPB) for the initiatives allowing comments on the Guidelines 05/2021. We continue to support a practical and balanced approach to further guidance whilst ensuring a high level of protection for personal data processed outside the EU, in line with the principles enunciated in the GDPR.

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<sup>1</sup> ESOMAR's Global Market Research 2021. Asia Pacific 15%, Middle East & Africa 4%. Of said amount 43% consists of established research, 29% consists of tech-enabled, and 28% consists of reporting (e.g. secondary research, consultancy, reports, etc).

We welcome this EDPB initiative aimed at clarifying the interplay between Article 3 and the provisions of the GDPR on international transfers in Chapter V.

International data transfers represent a vital component of the research, analytics, and insights sector and researchers and organizations can benefit from clearer guidelines in this area thereby continuing to foster an open European Research Area, an enabling environment for international data transfers, and high compliance with data protection principles and requirements. The research and insight supply-side sector is comprised of, many small and medium enterprises with limited access to technical legal expertise, would appreciate and benefit from mechanisms aimed at facilitating repetitive transfers of personal data that present a low risk to data subjects, thereby reducing the associated operating costs they already face when complying with GDPR itself.

In light of the above, we wish to draw attention to several points included in the consultation text that have a significant impact on the research, analytics, and insights sector. We have some our recommendations to further strengthen these provisions to optimize their value and use by our sector, particularly for the SMEs.

## Recommendations:

### **3 - Consequences**

**21-** *These instruments include the recognition of the existence of an adequate level of protection in the third country or international organisation to which the data is transferred (Article 45) or, in the absence of such adequate level of protection, the implementation by the exporter (controller or processor) of appropriate safeguards as provided for in Article 46. According to Article 49, personal data can be transferred to a third country or an international organisation without the existence of an adequate level of protection or the implementation of appropriate safeguards only in specific situations and under certain conditions.*

**22 -** *The main types of transfer tools listed in Article 46 are:*

- *Standard Contractual Clauses (SCCs).*
- *Binding Corporate Rules (BCRs).*
- *Codes of conduct.*
- *Certification mechanisms.*
- *Ad hoc contractual clauses.*
- *International agreements/Administrative arrangements.*

We recommend that the EDPB gives more weight to the active use of codes of conducts, such as GDPR-approved and internationally recognized codes as enabling tools for data transfers to third countries. Codes of Conduct are one of the best tools for small and medium sized enterprises and, once more widely adopted, could become a key driver in ensuring international data transfers are being conducted in a transparent, robust and consistent way.

We welcome the use of such tools and acknowledge the EDPB's pivotal role in ensuring the adequate level of protection and for implementing the appropriate safeguards. However, the current reticence by some EDPB members to provide operable avenues to enable Codes of Conduct to be created, supported and/or adopted is a barrier to their consideration by sectors such as our own.

As a result, we wish to highlight that a more supportive approach would go a long way towards the creation of these new mechanisms ensuring they provide the robustness sought by authorities, and the corresponding practicality that our stakeholders need to demonstrate legal certainty and practical guidance for implementation of secure data transfers. Such an approach would enable existing self-regulation schemes like those enforced by ESOMAR and EFAMRO and other national research bodies to propose these tools to our sector as a means to comply with GDPR; and to provide to EDPB members an additional safeguard to ensure that such activities continue to pose a low impact on users' privacy and a low risk of harm while enabling organizations to transfer data to third countries in a safe and reliable manner.

In that regard, if new transfer tools should be developed, EFAMRO and ESOMAR would welcome the opportunity to actively support the EDPB in their development by providing access to practitioners who are working on global compliance programmes with limited resources to do so.

Once again, we welcome this initiative and are grateful to the EDPB for the opportunity to provide our views and opinions. We wish to remain at your disposal to provide any complementary international perspective(s) that might be deemed helpful to the process.

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