

## EFAMRO and ESOMAR Consultation Response

### to EDPB Guidelines 3/2022 on Dark patterns in social media platform interfaces: How to recognize and avoid them

#### This position 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.<sup>1</sup>

**ESOMAR** the global voice of the data, research and insights community since 1947, it promotes the value of market, opinion and social research and data analytics.<sup>2</sup>

#### 1. About Market, Opinion and Social Research

1.1. EFAMRO and ESOMAR represent the data, research and insights sector, accounting for in Europe a reported annual turnover of €20.87 billion.<sup>3</sup>

1.2. Market, opinion and social 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 sciences to gain insight or support decision making. It involves systematic study of different spheres of society, politics, and the economy. Research, insight and analytics stand at the heart of all well-informed commercial, social and political decisions. Insight into what makes a product, business initiative or government policy work 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.

1.3. Many research and analytics providers subscribe to established self-regulation schemes that enable research respondents and 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.<sup>4</sup>

#### 2. Purpose of our Response

2.1. Our associations are responding to the European Data Protection Board's (EDPB's) proposed *Guidelines - 3/2022 on dark patterns in social media platform interfaces: how to recognize and avoid them* (hereinafter the "Guidelines"), which represents a comprehensive review of the GDPR tenets and its compliance challenges faced by social media platforms in the development of their services.

2.2. Our associations support this guidance and welcome the clarity which the guidance brings to some of the key concepts and their application, especially with regards to the addition of dark

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<sup>1</sup> For more about EFAMRO see: <https://efamro.eu/>

<sup>2</sup> For more about ESOMAR see: <https://esomar.org>

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

<sup>4</sup> ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics: <https://esomar.org/code-and-guidelines/icc-esomar-code>

patters categories and the illustration of the problems that the EDPB wishes to avoid. We do however have some concerns and feedback about how some of the concepts relate specifically to research and insight data.

### 3. Our considerations

3.1. We welcome and support the adoption of these Guidelines and recognize the importance of protecting social media users against so called “dark patterns”, and in particular the concern raised for the potential impact on children and other vulnerable individuals.

3.2. We welcome the decision of the EDPB of including in the Guidelines a list of best practices e.g., sign-up processes, privacy policies, using different devices, etc. Moreover, we believe that the EDPB’s expectations have been clearly summarized within the text and leave limited scope for misinterpretation.

3.3. We recommend that the categories of ‘dark patterns’ categories identified by the EDPB in the Executive Summary and Annex of the Guidelines should clearly state that such definitions of ‘dark patterns’ only apply when used in the context of social media platforms.

3.4. Some of the techniques described by the EDPB can be legitimately used for other purposes, e.g. ‘stirring affects’, which appeal to emotions and include visual nudges to determine behaviour, can be a legitimate approach for the purposes of market, opinion and social research for example when undertaking behavioural science research. If the dark patterns terms are used outside the context of social media platforms, they could cause unintended harm and disruption to legitimate practices such as market, opinion and social research.

3.5. With reference to 2.1 – ‘Accountability’, para 1.1., we strongly welcome the reference to research methodologies as a tool to demonstrate accountability and compliance with GDPR principles. As mentioned in the Guidelines, such research methodologies might consist of, but should not be limited to, qualitative and quantitative research, A/B testing, eye tracking or user interviews.

3.6. With reference to 3.2 – ‘Staying informed on social media’, para 74., we welcome the EDPB layered approach to informed consent which takes into consideration, among the criteria, the category of users on the platform or the general type of design of the application.

3.7. With reference to 3.2. – para 80, we would welcome further guidance from the EDPB on the application of the joint data controller requirements e.g., by including an example, of how joint controllers can provide information about the essence of their arrangement in a privacy notice in a clear and transparent way.

### 4. Next Steps

4.1. EFAMRO and ESOMAR welcome the opportunity to assist the EDPB in updating and finalising the dark patterns in social media platform interfaces guidance. To contact us for more information:

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