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edpb

European Data Protection Board

Rue Wiertz 60

B-1047 Brussels

February 11, 2021

Public Consultation on EDPB Guidelines 10/2020

Dear Sir or Madam,

The ADM welcomes the public consultation on the “Guidelines 10/2020 on restrictions under Article 23 GDPR”. The guidance on how to apply the legal provisions of Art. 23 GDPR is an important contribution to harmonising data protection in the European Union. Before we present our comments on the content of the Guidelines, please allow us 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 German trade association of its kind. At the time of writing, 68 agencies are members of the ADM, together accounting for about 80 percent of turnover in German market, opinion and social research (€ 2.3bn in 2019). 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 projects, and developing codes of conduct based on professional ethics, as well as quality standards for research methodologies.

Article 23 (1) GDPR contains a number of opening clauses which, in principle, allow the national legislators of the Member States of the European Union to restrict the rights of data subjects, as standardised in Articles 12 to 22 and 34, with regard to processing personal data relating to them for the reasons stated therein. German lawmakers have made use of these opening clauses in the amendment to the Federal Data Protection Law, Sections 32 to 36 BDSG, as amended, which was required in order to adapt these to the legal provisions of the General Data Protection Regulation.

In its explanatory memorandum to the Data Protection Amendment and Implementation Act (DSAnpUG-EU) recorded in Parliamentary Publication 18/11325 of 24 February 2017, the German Bundestag takes the view that the restrictions to the rights of data subjects, as standardised in

Article 23 GDPR, must also apply to personal data that is processed for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, as regulated by Article 89 GDPR. If this were not the case, processing personal data for archiving, research and statistical purposes would be in a weaker position than other processing purposes, notwithstanding the opening clauses in Art. 89(2) and (3) GDPR.

This weaker position would exist despite the fact that European legislators wanted to privilege the processing of personal data for archiving, research and statistical purposes as evidenced by the special provisions in Article 89 GDPR. Based on this legal opinion, German legislators made use of the opening clause, allowed by Article 89 GDPR, in Section 27 (2) of the BDSG, as amended, and restricted the rights of data subjects standardised in Articles 15, 16, 18 and 21 GDPR “to the extent that these rights are likely to render impossible or seriously impair the achievement of the research or statistical purposes and the restriction is necessary in order to fulfil the research or statistical purposes.”

In accordance with its scientific nature and the broad interpretation of the term “scientific research purposes” in Recital 159 of the GDPR, market, opinion and social research is not the addressee of Article 23 GDPR and Sections 32 to 36 BDSG, but rather of Article 89 GDPR and Section 27 of the amended BDSG.

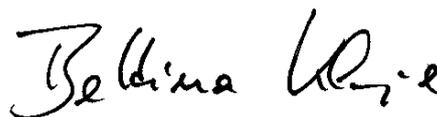
The ADM welcomes the fact that German legislators have made use of the opening clauses provided for in Article 89 GDPR as part of the necessary amendment to the Federal Data Protection Law. At the same time, ADM would like to point out that when scientific studies are conducted in market, opinion and social research, it is not generally necessary to restrict the rights of data subject as standardised in Articles 15, 16, 18 and 21 GDPR. Accordingly, these rights have found their way into the rules of professional conduct issued by the German associations for market, opinion and social research as an expression of the profession’s research-ethical responsibility.

If you have any questions or require further information, we will of course be happy to be of assistance.

Kind regards



Bernd Wachter
Chairman



Bettina Klumpe
Managing Director