



English Language Versions of Market and Social Research Guidelines

Codes of conduct and supplementary instructions provide information on the implementation of legal regulations, e.g. in data protection when processing personal data. On the other hand, they serve to ensure trustworthy communication with respondents and the public and define standards to ensure reliable quality of results.

The German industry associations ADM, ASI, BVM and DGOF have drawn up codes of conduct that are binding for the industry. A possible violation of these rules will be investigated by the Council of German Market and Social Research – if indicated – and can be punished with a published reprimand, disapproval or a tip.

In this document you will find a summary of the following guidelines:

- Guideline on Telephone Surveys (2021)
- Guideline on Online Surveys (2021)
- Guideline on Interviewing Minors (2021)
- Guideline on Recordings and Observations in Market and Social Research (2021)
- Guideline on the Handling of Addresses in Market and Social Research (2021)
- Guideline on the Handling of Databases in Market and Social Research (2021)
- Guideline on Surveys within and using Social Media (2021)

Guideline on Telephone Surveys

This English version of this Guideline is a translation of the original German version; in the event of variances, the German version shall take precedence over the English translation.

This guideline is issued by the associations for market and social research in Germany:

- 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.

1 Introduction

In principle, the same rules apply to telephone surveys as to scientific surveys conducted face-to-face, in writing or online. In essence, these rules require that the respondents' anonymity shall be strictly safeguarded and that scientific surveys shall be clearly separated from other activities. When asking respondents for their consent to take part in the telephone interview, they must be informed about its general purpose in a methodologically appropriate way and about the voluntary nature of participation. In the case of single surveys, the link between the telephone numbers and the survey data must be deleted at the earliest possible time, i.e. at the latest by the end of fieldwork and the checks associated with it. In the case of repeat or follow-up surveys, the names and telephone numbers of the respondents must be subjected to the intended security measures and they must be stored separately from the survey data.

This guideline is always to be applied in conjunction with the "ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics" prefaced by the "Declaration for the Territory of the Federal Republic of Germany", as well as the various guidelines issued by associations for market and social research in Germany.

2 Distinction from telephone advertising and sales promotion

When conducting telephone surveys, as with all studies in market and social research, it must be made clear that they are not a form of advertising and/or sales promotion and that the purpose of the telephone call is neither to announce nor to prepare such activities. This is important because telephone calls for advertising and/or sales purposes made to private households with which no contractual relationship exists or which have not explicitly consented to such calls are prohibited by rulings of the highest courts and by corresponding legal provisions. In the commercial sector (business to business), telephone calls for advertising and/or

sales purposes are similarly prohibited if the purchase of the products being promoted is not part of the normal business operations of the party being called.

These restrictions apply to telephone advertising in the broadest sense. They do not apply to calls that are made exclusively for research purposes. For this reason too, the distinction between scientific research on the one hand and advertising and sales promotion on the other must be strictly observed. The distinguishing criterion arises from the objectives and goals of the survey, not from its content. Thus, for example, telephone surveys aiming to measure, i.e. research, the response to advertising or the success of sales efforts are permissible.

Communicating the names of respondents, such as prospective buyers or dissatisfied consumers, obtained from surveys or other forms of data collection to the client so that the client can respond to them individually is not permissible because it contradicts the requirement of anonymisation in market and social research. This also applies if the contact data was given to the agency conducting the survey by the client.

For this reason, market and social research on the one hand and inquiries for the purpose of individual sales promotion on the other hand must not be combined within the same telephone call; the interview for scientific purposes of market and social research must not be used as a "prelude" for other inquiries. If it is not permissible to make these other inquiries by telephone, then the interview conducted beforehand during the same telephone call is not permissible either. Similarly an interview carried out for the scientific purposes of market and social research – regardless of the data collection method used – must not be used to obtain permission for a separate telephone call conducted for the purpose of advertising and/or sales promotion or sending informational material.

3 Self-imposed restrictions on telephone interviews

3.1 General

Even a call that is made for research purposes – to persons in private households – affects their personal privacy. This enjoys particular legal and statutory protection. Consequently, calls which are in principle permissible must nevertheless be conducted in a way so that no relevant infringement of people's privacy occurs. This is not determined by the opinion of a single respondent but by what can be expected based on the fundamental values of the general public and the relevant public involved.

3.2 Calling times

The associations for market and social research in Germany assume that calls to private households – apart from unavoidable individual cases – do not constitute an invasion of people’s privacy if they take place

- on Mondays to Fridays, not before 9 a.m. and not after 9 p.m.,
- on Saturdays, not before 10 a.m. and not after 8 p.m., and
- on Sundays and public holidays, not before 10 a.m. and not after 6 p.m.

The last attempts to contact respondents must be scheduled on the basis of the average length of an interview that can be expected for the survey in question.¹

For telephone calls in the commercial sector and to freelance professionals, the rules for calling times are implied by the office hours. These rules on calling times do not apply to interviews by appointment.

Telephone interviews on Sundays and public holidays are only permissible if they are necessary for methodological reasons in order to conduct the study. In every case, this methodological necessity must be documented.

3.3 Frequency of attempts to contact

In any one study, a maximum of ten attempts to contact respondents at one telephone number are permissible. A maximum of four attempts are permissible in one day, leaving an interval of at least one hour between each attempt. Attempts that fail because a number is engaged may be contacted twice repeatedly within 30 minutes.

The attempts made to contact a number must be documented for each telephone number. In each case, the corresponding records must be kept for at least three months.

If demonstrably required by the objectives of the study or for methodological reasons, a maximum of 15 attempts can be made to contact a single telephone number for any one study. This requirement must be individually documented for each study.

3.4 Refusal to participate

3.4.1 General

In principle, there are three reasons why the person receiving a telephone call may refuse to take part in a telephone interview, i.e. not want to be interviewed or provide information about the target individual within the household. These reasons must be treated differently as regards whether or not it is permissible to contact the same number again.

3.4.2 Refusal due to situation

If the person receiving a telephone call does not want to be interviewed or give details about the target individual within the household because the phone call comes at an inconvenient time, then it is permissible to contact the same number again in the context of this survey, preferably having previously arranged a suitable time for the interview.

3.4.3 Refusal due to subject matter

If the person receiving a telephone call does not want to be interviewed because they are not interested in the subject matter of the survey or they do not wish to provide information on this topic, then it is not permissible to contact the same number again in the context of this survey, i.e. the telephone number in question must not be contacted again for this survey.

3.4.4 General refusal

If the person receiving a telephone call does not want to be interviewed because they are generally not willing to take part in surveys for market and social research purposes, then it is not permissible to contact him or her again in the context of this or any other survey, i.e. the telephone number(s) in question must not be contacted again. Beyond this, it is necessary to ensure as far as possible – for example through internal measures within the professional association – that the telephone number(s) in question is/are no longer used by other research agencies either.

3.5 Right to object

If the telephone numbers selected for a survey are provided by the client commissioning the survey or another data controller, the persons called must be informed about the source providing their telephone number. In addition, they must be informed of their right to object to the transmission and use of their telephone number(s), both vis-à-vis the client or other controller and vis-à-vis the research agency (see also Section 4.2. of the “Guideline on the Handling of Addresses in Market and Social Research”).

4 Automatic diallers

4.1 General

For the person receiving a telephone call, systems that assist or automate the dialling procedure are in principle no different from manual dialling by the interviewer; they are therefore equally permissible, provided that the self-imposed restrictions mentioned above and the following professional rules of conduct are observed. Where relevant, the latter also apply to manual dialling.

4.2 Ringing time

Attempts to contact a number for telephone surveys shall be terminated at the earliest after 15 seconds and at the latest after 40 seconds, if the call is not answered.

¹ For example, if a survey can be expected to last an average of 30 minutes, all attempts to contact respondents on Mondays to Fridays must cease at 8:30 p.m.

4.3 Dropped calls²

A dropped call is any call that is terminated by the dialling system before reaching the ringing time set according to Section 4.2, because no interviewer is available. The percentage of dropped calls per day may not exceed one percent of all attempts to contact existing telephone numbers.

4.4 Connection time

On principle, all answered calls must within one second either be connected to an interviewer or terminated if no interviewer is available.

4.5 Silent calls

A silent call is any answered call that is not connected to an interviewer within one second at the latest. The percentage of silent calls per day may not exceed one percent of all attempts to contact existing telephone numbers.

If the automatic dialler used is not able to distinguish between dropped calls and silent calls, the total percentage of such calls per day must not exceed one percent of all attempts to contact existing telephone numbers.

4.6 Further calls

If a telephone number has received a dropped or a silent call, the research agency may only attempt to contact this number within the next 30 days in a way that rules out the possibility of a further dropped or silent call.

4.7 Statistics on dropped and silent calls

If dropped or silent calls can occur as a result of an automatic dialler, the research agency must keep daily records on the percentage of dropped and silent calls. These records shall be stored for a minimum period of three months.

4.8 Documenting automatic diallers used

If dropped or silent calls can occur as a result of an automatic dialler, the research agency must be able to explain, by means of a suitable description, how the automatic dialler works, how any dropped and silent calls that occur are registered, and how any resulting complaints are handled.

4.9 Fully automated interviews

Fully automated interviews, i.e. interviews that resort to automated answering systems without using interviewers, are only permissible if the target individuals have been fully informed and given their effective consent during a previous contact (face-to-face or by telephone).

4.10 Screening interviews

Interviews that are conducted solely for the purpose of determining whether the persons to be reached at the selected telephone numbers belong to the target group of the survey (screening interviews) are also subject to the

professional rules of conduct set forth in the "Telephone Guideline" – to the extent that these are applicable.

5 Displaying the telephone number

In order to allow the persons called to discover the identity of the research institution which is calling or has called them so as to conduct a telephone interview for purposes of market and social research even without answering the call – e.g. due to absence – the research institution must ensure that a telephone number is shown in the display of the telephone called, which the person called can use to contact the research institution, which is the controller within the meaning of the EU-GDPR or on whose servers the personal data is processed. The telephone number displayed can be a "normal" local telephone number or an 0800 service number. It must connect callers directly either to an employee of the research institution or to a voice mailbox that allows the following on pressing a further button:

- Obtaining information about the research institution (via a recorded message);
- Obtaining information about the purpose of the telephone call (market and social research) including the source of the telephone number (via a recorded message);
- Obtaining information about the professional rules of conduct and the Code of Professional Conduct of German market and social research (voluntary participation, preserving anonymity, separation from non-research activities) (via a recorded message);
- Being connected to an employee of the research institution.

The person making the call must not incur any further costs beyond the standard phone charges as a result of phoning the telephone number displayed.

6 Call forwarding

Forwarding telephone calls is the decision of the respective subscriber of the telephone number. However, it is also in the interest of the research institutions conducting telephone surveys, because it helps to improve the quality of their sample by increasing availability. It is therefore the research institutions' responsibility to ensure, as far as possible, by appropriate means that no excessive additional costs are incurred by the persons receiving the telephone call as a result of call forwarding. This applies in particular to telephone calls that are forwarded abroad. Attempts to contact a number should therefore be abandoned if it becomes apparent that the call is being forwarded abroad. If it only becomes apparent that the call is being forwarded abroad after contact has been established, the interview should be terminated, agreeing on a time for a further call.

7 Making contact

In terms of data protection laws, the rules for single surveys conducted by telephone are in principle no different from those for face-to-face surveys. When making contact, the following information must be provided in accordance with Article 13 EU-GDPR:

² Dropped calls and silent calls are caused by the automatic dialling system, because no interviewer is available. They are not unsuccessful attempts to contact respondents, in which the call to the number called is not answered within the allowed ringing time, according to Section 4.2.

- the identity of the research institution or the controller, if this is not the research institution, in a comprehensible manner that can be understood without difficulty by the data subjects
- the general purpose and the legal basis (incl. the legitimate interests) for the call;
- the voluntary nature of participation, if this is not obvious;
- the recipients or categories of recipients of the personal data (e.g. field service provider – market research agency, research groups);
- where applicable: transfer of personal data to a third country;
- duration of storage (e.g. destruction after end of project);
- right to withdraw consent;
- the source of the telephone number and the right to object to its transfer and/or use;
- the contact details of the data protection officer;
- where relevant: the existence of automated decision-making;
- the rights of access, rectification, erasure and restriction, as well as the right to object to processing and the right to lodge a complaint with the data protection supervisory authority.

If this information and further explanations cannot be communicated over the phone in a transparent and comprehensible manner, they must be given to the respondent in writing by letter, fax or email or made available for download over the Internet.

The link between the survey data and the names, addresses and telephone numbers of the respondents must be irreversibly removed at the earliest possible time, i.e. at the latest by the end of the fieldwork and the checks associated with it.

In the case of repeat or follow-up surveys, consent to store the address data, telephone numbers and selection criteria needed for the subsequent interview(s) must also be obtained during the first interview. (See also section 3.4. of the “Guideline on the Handling of Addresses in Market and Social Research”.) If consent is not given, then this first interview is considered a one-time interview as in a single survey.

When obtaining permission to store the address for a repeat or follow-up survey, the key points covered in the “Statement on data protection and the total confidentiality of your responses to written or oral interviews and questionnaires” must be communicated over the telephone. A sample text is attached to this guideline. If consent is given to storing the address and telephone number without the respondent first being informed that the data from the initial interview will be reused for repeat or follow-up interviews, such consent is legally not valid.

The manner in which the repeat or follow-up interview(s) is/are to be conducted must be communicated at the time of the initial interview. Likewise, respondents must be informed, where applicable, if the nature of the further interview – by telephone, face-to-face, in writing or online – has not yet been decided.

In the case of repeat or follow-up surveys carried out face-to-face, in writing or online, respondents must receive suitably

modified information on data protection, at the latest when they are contacted again. Depending on the target group and the topic of research, it may make sense to send this information on data protection immediately after the initial telephone interview.

It needs to be observed whether the initial and repeat or follow-up interview(s) will be conducted by different research institutions. Consent for a repeat or follow-up interview must be obtained during the initial interview. The respondent’s consent to a repeat or follow-up interview by another research institution must be obtained by the research agency that conducted the initial interview, at the latest before the other research institution contacts the respondent. See also the “Guideline on the Handling of Addresses in Market and Social Research”, in particular Section “4.7 Collaboration between research agencies”.

8 Listening in on telephone interviews

8.1 Scientific-methodological purposes of listening in

In order to ensure that the interviews are conducted in a formally correct manner and the required information (see Section 7 and the sample wording for contacting in the Appendix) is correctly communicated during the contact, it may be necessary for methodological reasons for the person(s) in charge of the professional supervision of the interviewers to listen in to the interviews from time to time. Beyond this, the first interviews from a sample may serve as a pre-test regarding the understanding of the wording of the questions and the appropriate order of the topics during the interview. This too can make it methodologically necessary for employees of the research agency conducting the survey or employees of research agencies collaborating for the purpose of the scientific survey, to listen in on interviews.

Client representatives, too, may have a methodological interest in convincing themselves of the quality of data collection process, by listening in on interviews on the premises of the research agency carrying out the scientific survey or the premises of the collaborating research agencies (see Section 8.2).

In order to preserve the anonymity of the person receiving the telephone call, precautions must be taken to ensure that the client representative(s) who is/are listening in only join(s) the call after the initial contact has been made and the actual interview has begun, so that the name of the person receiving the telephone call is not mentioned again. Furthermore, the telephone number contacted must not be visible to the client representative(s) who is/are listening in. Client representatives shall not be permitted to listen in if it can reasonably be assumed that the person receiving the call might be identified, for example on account of a business relationship.

8.2 Listening in externally

8.2.1. Listening in externally between research agencies

Listening in to telephone interviews externally with external devices when different research agencies are collaborating (e.g. subsidiary companies, independent contractors, subcontractors, in the context of a research group) is only permissible if the following conditions are met:

- The research agency that wants to listen in is not also the client commissioning the study and/or the end user of the research findings.
- The research agencies participating in the study and wishing to listen in must undertake contractually to maintain the anonymity of the respondents, to listen in exclusively for training and quality control purposes, as required for the scientific methodology, and to coordinate closely with each other when announcing and carrying out the listening in process.
- Additional requirements may arise when personal data is processed outside the European Union.

8.2.2 Listening in externally by end clients

End clients and authorised additional users may only listen in to telephone interviews externally with external devices outside the premises of the research agency conducting the survey and its subsidiary companies or affiliate companies if they adhere to the necessary protective measures, and in particular only under the following conditions:

- The consent of the interviewers must specifically include the listeners, in accordance with 8.3.
- The person interviewed must be informed in the same manner as the interviewer before the study and must have given his or her consent (see 8.4).
- The persons listening in must personally sign the “Declaration of Commitment by End Clients Listening in on Telephone Interviews for the Purposes of Market and Social Research” and the “Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation” attached as an appendix to this guideline before the survey and send it to the agency conducting the research beforehand.
- Listening in must take place in closed rooms to which only those persons have access who have signed the aforementioned Declarations of Commitment.
- Furthermore, listening in externally is only permissible if listening in at the telephone studio of the agency conducting the survey, as preferred, is not possible for important reasons on the part of the end client.
- Additional requirements may arise when personal data is processed outside the European Union. Articles 45 et seq. EU-GDPR must be observed.

8.3 Consent of the interviewers

The interviewers must be informed when they begin working for the research agency and at the start of each individual assignment that listening in may take place from time to time for the scientific methodological purposes of training and quality control. Data protection supervisory authorities require that in addition to being informed, the interviewers must also give their consent to the interview being listened in on. It follows that listening in without consent is illegal. Data protection supervisory authorities also take the view that declarations of consent are not valid indefinitely, but must be obtained again at appropriate intervals; although there are no mandatory legal requirements in this respect, consent should be obtained again after 12 months.

8.4 Interests of the respondents

Respondents are informed at the beginning of the interview about the purpose of the telephone call.

The associations for market and social research hold the view that a telephone interview conducted for the scientific purposes of market and social research is not a confidential conversation between two private individuals, since its contents – while preserving the anonymity of the respondents – are explicitly intended for third parties, and the interview takes place solely for this purpose. However, according to the data protection supervisory authorities, listening in is only lawful with the express prior consent of the respondent to the interview. To be as safe as possible, consent must be obtained.

9 Recording telephone interviews

Audio recordings of telephone interviews are only permitted if the respondents and the interviewers have expressly consented to this beforehand. Apart from quality checks and training interviewers, such recordings are used particularly for analysing open questions, if the unabbreviated verbatim responses are needed.

Recordings of telephone interviews may only be transmitted to the client commissioning the study in an anonymised form and with the consent of the respondents and the interviewers. The respondents’ anonymity must not be jeopardised by this, i.e. the transmission is not permissible if it can reasonably be assumed, for example, that the client might be able to identify the respondents on account of a business relationship. In addition, the transmission of the recording presupposes that the client is obligated to use the recordings of telephone interviews exclusively for research purposes. See the analogous rules in the “Guideline on Recordings and Observations in Market and Social Research”

10 Final provisions and disclaimer

This guideline forms part of the Code of Professional Conduct that govern German market and social research, resulting as they do from the law and the methodological standards, but also from common practice.

This guideline always applies when telephone calls are made from within Germany. If telephone calls are made to a foreign country in which stricter rules apply than those described in this guideline, then under foreign law these stricter regulations must normally also be observed. This guideline also applies to telephone calls made to Germany from abroad. In this case too, more extensive foreign regulations must be observed.

The principles and practices described in this guideline represent, inter alia, the result of weighing up the personal rights of the data subjects on the one hand, and the right to conduct research, together with the resulting methodological requirements, as well as the freedom of information on the other. However, the issuers of this guideline cannot guarantee indemnity. If the issues are weighed up at a later time or by other authorities, it cannot be ruled out that different standards may result regarding the permissibility of the practices described.

First version April 1996, last full revision January 2021, September 14, 2022: Adjustment in chapter 3.3

Appendix:

1. Sample text (minimum requirements) for contacting respondents with additions, where necessary, on obtaining consent to making audio recordings and storing addresses for repeat and follow-up surveys, as well as for general refusals

Contacting respondent:

Good morning/afternoon/evening. My name is _____ and I am from _____ (agency) _____ in _____.

We are carrying out a scientific study on _____ (general subject matter) _____.

(Generated telephone numbers: Your telephone number was selected using a scientific (random) procedure.

(Telephone numbers from clients: Your telephone number was provided to us by _____ (name client!) for the purpose of conducting this study.)

(Telephone numbers of clients where the client cannot be named at the beginning, only for methodological reasons: Your telephone number was provided to us by the client of the study for the purpose of conducting this study. For methodological reasons, I can only reveal the name of the client at the end of the interview.)

Your participation is voluntary but it is very important that all the people selected actually take part, if possible, so that the results of the survey are correct.

[For research groups in which personal data is shared: We are conducting the project as part of a research group, together with (agency) _____ in _____.]

[If the agency to which the personal data will be transferred is located outside the EU/EEA, please refer to Article 45 et seq. of the GDPR and name the appropriate safeguards.]

The data will be analysed anonymously [For research groups in which personal data is shared: by the agency _____], i.e. not in connection with your name, address or telephone number. These will be destroyed after the scientific project has been completed.

Before the interview begins, I have some brief information for you: We are happy to provide you with the contact details of our data protection officer, whose details you can find under.... There you will also find detailed information on your data protection rights, including your rights of access, rectification, erasure and restriction, as well as your right to object to processing and the right to lodge a complaint with the data protection supervisory authority.

[Should the respondent not have Internet access: Provide other means of receiving information. e.g. read aloud, send by post].]

2. Consent to recording (if required):

With your permission we would like to record the interview for scientific purposes and to avoid mistakes. However, your anonymity will not be jeopardized by this.

3. Consent to storing the address for repeat or follow-up surveys (if required):

Thank you very much for being so kind as to providing us with this information.

Finally, I have one further request: May we call you again when we conduct another study for market and social research purposes? In the meantime, we would store your name and telephone number but keep them separate from the information you were kind enough to provide today. As with today's interview, any later interview will be analysed in an anonymous form. You can withdraw your consent at any time with effect for the future. For further information, please visit... (name Internet address here).

4. General refusal (if required):

We regret your refusal to participate in telephone surveys in general. Of course, we respect your wish not to receive any further phone calls. We will therefore block your telephone number and by doing so ensure that you receive no further calls from us – or any other agencies, in as far as this is possible for us.

5. Declaration of Commitment by End Clients on Listening in on Telephone Interviews for the Purposes of Market and Social Research

The end client/agency commissioning the research identified below is to be given the opportunity by the agency conducting the research for the study _____ (name of study/method) to listen in on telephone interviews for **research and/or quality assurance purposes**.

Listening in is only permitted if all persons concerned (interviewers and respondents) are **informed** in advance and **have given their consent**. Such consent is documented by the agency conducting the interviews.

Only the agency conducting the interviews may grant the right to listen in on the interviews. In all cases, participation by unauthorized third parties must be ruled out. The agency conducting the interviews must have the possibility of interrupting the listening in at any time. The end client must not join the interviews independently to listen in on them.

The end client/agency commissioning the research hereby commits her-/himself as follows::

1. Listening in on calls will only be done for research and/or quality assurance purposes and only for the purpose of the research objective.
2. Third parties will not be granted the possibility of listening in. The concrete contents of the interviews that are listened in on will not be recorded, shared or narrated to others.
3. No attempt will be made to de-anonymise the data, and any such attempt will be prevented. No independent sound recordings will be made and no notes will be taken that are or can be related to individual persons.
4. The following applies to external listening in:
 - 4.1 The persons involved in listening in externally have personally signed the "Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation (GDPR)" attached as an appendix before listening in and have sent this to the agency conducting the research beforehand.
 - 4.2 Listening in externally is only permissible in closed rooms to which only those persons have access who have signed the aforementioned "Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation" and who have submitted it to the agency beforehand.

This written declaration is part of the "Guideline on Telephone Surveys" and thus part of the Code of Professional Conduct for German Market and Social Research.

End client/agency commissioning the research (Name, Address):

Agency conducting the research:

(Agency Stamp)

Authorised to issue this declaration:

(Name)

(Place)

(Position in the company)

(Date)

6. Personal Declaration of Commitment to Comply with the Data Protection Requirements according to the General Data Protection Regulation (GDPR)

I understand that according to the "Guideline on Telephone Surveys" issued by the associations for market and social research in Germany:

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- BVM Berufsverband Deutscher Markt- und Sozialforscher e. V.
- Deutsche Gesellschaft für Online-Forschung – DGOF e. V.

this Declaration of Commitment must be signed and presented to the agency conducting the interviews in order for listening in on telephone interviews to be permissible in market and social research. The persons involved at the agency or end client commissioning the research must therefore sign this personal Declaration of Commitment to comply with the data protection requirements in accordance with the General Data Protection Regulation (GDPR) and send it to the agency conducting the interviews before the study.

I will listen in on telephone interviews in the study on the topic of ... (Client: ..., Contractor: ...) in ... (Place/Address) on No attempt will be made to de-anonymise the data, and any such attempt will be prevented. I am aware that I am not permitted to take photos or make audio or video recordings or to take notes that are or can be related to individual persons.

I have been informed that it is prohibited to process personal data without authorisation. Personal data may therefore only be processed if permitted by consent or a legal regulation, or if processing such data is legally mandatory (Art. 6 GDPR). The principles of the GDPR for processing personal data are set out in Art. 5(1) GDPR and essentially include the following obligations: Personal data shall be:

- processed lawfully and in a transparent manner in relation to the data subject;
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimisation");
- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;
- processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ("integrity and confidentiality").

I understand that if data is processed that is subject to the secrecy of social data, it must be treated confidentially by me to the same extent as it was treated confidentially by its original transmitter.

I understand that any violation of this obligation may be punishable by a fine and/or imprisonment and that a violation may at the same time constitute a breach of contractual obligations. Culpable violations of this obligation may also result in claims for damages (under civil law). Any separate Declaration of Commitment to maintain confidentiality shall not be affected by this declaration.

This Declaration of Commitment shall continue to apply even after I have ceased to work for my current employer/client. With my signature, I confirm this Declaration of Commitment. I have received a copy of this document.

Name, First name:

Place / Date: Signature:

Guideline on Online Surveys

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1 Introduction

Scientific online surveys for the purposes of market, opinion and social research are conducted by private sector research agencies as well as academic and other public and corporate research facilities. When the term “research agency” is used in this guideline, it refers equally to all of these groups.

For the purposes of this guideline, an online survey is any qualitative or quantitative survey conducted using the Internet or over the Internet or through the exchange of electronic data. The term does not cover purely passive methods of data collection or VoIP telephony.

For online focus groups or other qualitative online survey methods, readers are also referred to the “Guideline on Recording and Observation in Market and Social Research”.

This guideline is always to be applied in conjunction with the “ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics” prefaced by the “Declaration for the Territory of the Federal Republic of Germany”, as well as the various guidelines issued by associations for market and social research in Germany.

The scientific procedures, the voluntary nature of participation, the anonymisation of the data collected and the strict separation of research and non-research activities form the ethical, methodological and legal foundations of market and social research.

2 Scientific nature of the procedure

Market and social research is based on scientific methods and techniques of data collection and data analysis.

As with all techniques of data collection, for online surveys too, sample selection and drawing must be based on a scientific procedure in the sense of rule-based, verifiable and

reproducible methods that are appropriate to the research goal. Self-recruitment of respondents is as a rule not suitable to ensure that the research results can be generalised to the population as a whole.

A scientific sampling procedure exists if the respective population of a study is explicitly defined in factual, spatial and temporal terms and, at the same time, the sampling frame adequately covers the population.

The selection of participants in a study must be adequately documented and reproducible. The fit between the sampling procedure and the research objectives must also be presented in the research proposal and, if applicable, in the research report, and the reference data used for projections, weightings and/or quotas must be documented.

In online surveys – as with all studies in market and social research – the way in which the population is defined and how the sample has been formed and selected must be documented for the client.

If the research findings are not or only partially representative due to shortcomings in the definition of the population, the sample selection, the response rate or the target-actual-structure, this circumstance must be explicitly pointed out.

The design of the questionnaire in terms of content, formal or technical aspects, and where applicable the type or scope of incentives offered to respondents must not lead to any substantial distortion of the research results. In particular, parts of the selected sample must not be factually excluded from the survey as a result.

Where methodologically required, appropriate statistical corrections, including the treatment of missing values, must be made and documented.

3 Voluntary nature of participation

In online surveys – as with other techniques of data collection – respondents must be informed already at the time of recruitment about the voluntary nature of participation, which continues up until the end of the study, and, if appropriate, that not taking part in the study will not lead to any disadvantages for them. In addition, they must be informed that their responses will be used exclusively in an anonymised form and for research purposes only.

Obtaining the consent to participate in a study by electronic means must be a deliberate and clear affirmative act on the part of the persons selected and must be recorded. Those persons who have consented to participate must be able to view the contents of the consent given at any time.

In studies in which visitors to a particular website are asked to take part in a survey, it must be ensured that visitors who refuse to take part can nevertheless continue straight to the actually intended website – e. g. by clicking on a suitable button.

If a follow-up or repeat interview is planned, an appropriate on-screen consent form must be shown to the respondent and consent must be obtained no later than the end of the first interview (see, for example, the “Consent to storing addresses for repeat or follow-up surveys” in the Guideline on Telephone Surveys). Respondents must be given the opportunity to print out and/or save this declaration of consent. The respondents must be able to refuse further participation in the study by selecting a suitable option.

When recruiting access panel members, it must be explicitly pointed out to them that their address, together with various selection criteria, will be stored by the operator of the access panel for the purpose of further surveys. Furthermore, it must be pointed out that the access panel members can terminate their participation at any time and can demand that this data be deleted. The incentives earned by access panel members up to the time they withdraw from the panel must in every case be awarded to them.

The persons selected for a study must be given the opportunity to find out more about the research agency carrying out the study, at least by receiving details of a suitable contact at the operator of the access panel (e. g. postal address, telephone number, email address). In addition, a corresponding link to the homepage of the agency conducting the research is recommended.

If data (such as behavioural data) is to be linked to the responses that respondents give during a survey, they must be asked for their explicit prior consent. Consent is required in particular if it is essential to the study for software programs to be installed or user behaviour to be recorded on the end devices of the participants, e. g. by means of cookies, hidden identifiers, fingerprints or suchlike. The scientific purpose of the collection and storage of additional information must be explained to the respondents. Consent must be expressly and actively declared; this can be done by clicking on a corresponding button in conjunction with an explanatory text. Respondents must at all times have the opportunity to refuse the storage of personal data and, if necessary, not to participate in the survey. The Guideline on Telephone Surveys gives details on the rights of the data subjects and the agency’s obligation to provide information and instruct them.

A sample consent form for the use of techniques for recording user behaviour is attached as an appendix to this guideline.

Techniques for recording user behaviour may only be used for the research purposes of the investigation, even if another legal basis is used, such as “processing for the purposes of the legitimate interests pursued by the controller or by a third party” (Article 6(1)(f) EU-GDPR) or

“processing for the performance of a contract” (Article 6(1)(b) EU-GDPR).

Consent is not required if the additional data that is collected and linked only serves the purpose of managing the survey or controlling its quality and not that of processing personal data; even if consent is not required, respondents must be informed. This must be explained in a data protection statement that can be found by following a link.

4 Making contact

When making contact, the following information must be provided in accordance with Article 13 EU-GDPR:

- the identity of the research institution or the controller, if this is not the research institution, in a manner that can be understood easily by the data subjects
- the general purpose and the legal basis (incl. the legitimate interests);
- the voluntary nature of participation, if this is not obvious;
- the recipients or categories of recipients of the personal data (e. g. field service provider – market research agency, research group);
- where relevant: transfer to a third country;
- duration of storage (e. g. destruction after end of project);
- right to withdraw consent;
- the source of the email address and the right to object to its transfer and/or use;
- the contact details of the data protection officer;
- where relevant: the existence of automated decision-making;
- the rights of access, rectification, erasure and restriction, as well as the right to object to processing and the right to lodge a complaint with the data protection supervisory authority.

If this information and further explanations cannot be communicated in a transparent and comprehensible manner, they must be given to the respondent in writing by letter, fax or email or made available for download, for example.

The link between the survey data and the names, telephone numbers, IP addresses and postal addresses of the respondents must be irreversibly removed at the earliest possible time, i.e. at the latest by the end of the fieldwork and the checks associated with it.

In the case of repeat, follow-up or panel surveys, consent must also be obtained during the first interview to store the address data, telephone numbers, email addresses, IP addresses and selection criteria needed for the subsequent interview(s). (See also Sections 4.8.2 and 5.2 of the “Guideline on the Handling of Addresses in Market and Social Research”.) If consent is not given, then this first interview is considered a one-time interview as in a single survey.

When obtaining permission to store the address for a repeat or follow-up survey, the key points covered in the “Statement on data protection and the total confidentiality of your responses to interviews and questionnaires” must be communicated. A sample text showing how this should be worded is attached as an appendix to this guideline. If consent is given to storing contact data without the

respondent first being informed that data from the initial interview will be reused for repeat or follow-up interviews, such consent is legally void.

The manner in which the repeat or follow-up interview(s) are to be conducted must be communicated at the time of the initial interview. Likewise, respondents must be informed, where appropriate, if the nature of the repeated interview – by telephone, face-to-face, in writing or online – has not yet been decided.

In the case of repeat or follow-up surveys carried out face-to-face, in writing, online or by telephone, respondents must receive suitably modified information on data protection, at the latest when they are contacted again. Depending on the target group and the topic of research, it may be reasonable to send this information on data protection immediately after the initial interview.

Attention should be paid to whether the initial and repeat or follow-up interview(s) will be conducted by different research institutions. The respondent's consent to repeat or follow-up surveys carried out by a different research institution must be obtained from the respondent before he or she is contacted by that research institution. See also the "Guideline on the Handling of Addresses in Market and Social Research", in particular Section "4.7 Collaboration between research agencies".

5 Invitation to surveys by email

In principle, email advertising is subject to the same legal restrictions as telephone advertising and fax advertising, unless the requirements of § 7 (3) UWG (German Act against Unfair Competition) are met. This means that emails for advertising purposes are prohibited without prior consent. A detailed investigation of the legal situation – though this has not yet been confirmed by the courts – suggests that these restrictions do not apply to emails that do not serve advertising but solely research purposes and the recruitment of participants for research purposes. This difference in the legal situation alone means that the strict separation between research on the one hand and advertising and sales promotion on the other hand must be observed in the case of email surveys – as with all data collection methods used in market and social research.

If a person has explicitly expressed the wish not to receive (further) emails in the context of an email survey conducted for market and social research purposes, it is not permissible to attempt to recruit him/her once again by email in the course of this survey or to send him/her a questionnaire. If in addition he/she has refused any form of participation in this survey, other means of contacting him/her again are not permissible either.

If the email addresses of potential respondents for a research project are supplied to the research agency by the client or a commercial address broker, the responsibility for the lawfulness of storing and transferring these addresses lies particularly with the client or commercial address broker. However, the research agency is required to ascertain exactly where the addresses come from. If the client or the commercial address broker is unable to prove that the addresses are drawn from publicly accessible sources or that legally effective consent has been obtained, there is a significant risk that processing is not permissible and is therefore in violation of the General Data Protection

Regulation. (The general problem of transmitting addresses for research purposes is dealt with in the "Guideline on the Treatment of Addresses in Market and Social Research".)

6 Anonymisation of the data collected

As always in market and social research, data collected online, too, may only be transmitted to the client commissioning a study or to other institutions in an anonymised form. Transmission in a personalised form is only permissible in the context of research agencies collaborating on the same research project and to the extent that it is necessary in order to achieve the research goal. Respondents must be informed accordingly. (Again, please refer to the "Guideline on the Treatment of Addresses in Market and Social Research" for this.)

In online surveys, too, the names and addresses of respondents are collected exclusively for the purposes of quality control and to conduct repeat or follow-up surveys. Names and addresses, as well as other personal data relevant for target group selection, are treated according to the same criteria as with any other techniques of data collection:

Address data (name, postal address, telephone number, email address) and interview data must be separated from one another immediately on being received by the research agency. After this, the only link between them is a shared code number. The address data must be destroyed at the earliest possible time. With single surveys, this is the case once quality checks of the collected data have been completed; with repeated or follow-up surveys, the address data – in the case of access panels together with various selection criteria – are stored until the end of the study. If a respondent demands that his/her address data and any stored selection criteria be erased, these must be deleted immediately.

The data collected online must be secured at the research agency against access by third parties. If it is temporarily stored on a server that simultaneously allows access to online media, suitable technical precautions must be taken to ensure that third parties cannot access this data. If such temporary storage takes place on the server of a provider, the research agency must place the provider under the obligation to take the necessary technical precautions to ensure that third parties cannot access the data on that server or during data transmission. Temporary storage of the collected data on a server must be terminated at the earliest possible time.

7 Separation of research and non-research activities

Market and social research activities must be strictly separated from any kind of non-research activities in terms of their organisation and execution. In particular, surveys and other research instruments must not be combined with advertising or sales promotion activities. This requirement to separate research and non-research activities leads to the following concrete requirements for online surveys:

- Advertising on websites or in apps used for surveys and other research instruments is not permissible. This is true even for websites set up for the purpose of recruiting respondents. The impermissibility of advertising also applies when the recruitment of the respondents or the interviews are conducted by email. The impermissibility

of advertising does not include the case in which potential participants in a study are to be recruited or made aware of the study – regardless of the methodological problems that may be associated with this.

- Websites or apps for surveys and other research instruments, email questionnaires and electronic questionnaires must not contain any links which might take the respondents straight to websites belonging to the client commissioning the study or to other websites. References to such sites are not permissible either. The only exceptions to this rule are links and references to websites that can be used by participants to obtain information about the research agency/agencies conducting the study or about market and social research in general, links to data protection declarations within the scope of the duty to inform data subjects in accordance with the EU General Data Protection Regulation, and links that are necessary on account of the research design.
- Access panel members must not be confronted with targeted advertising offers and sales promotion measures as a result of their participation. This applies not only to interactive advertising offers and sales promotion measures, but to all forms of advertising and sales promotion. Sending test products or advertisements as part of the test design for research purposes is not a form of advertising or sales promotion.

Giving incentives to respondents in an online survey must not be used as a means of advertising or sales promotion for products and services offered by the client or some other company. In addition, the requirement of anonymisation demands that the incentives are distributed by the research agency carrying out the study or a third party commissioned with this and not – because of the necessary transmission of names and addresses – by the client of the study. (See also the “Guideline on the Handling of Addresses in Market and Social Research”.)

8 Final provisions and disclaimer

This guideline forms part of the Code of Conduct that governs German market and social research, resulting as they do from the law and the methodological standards, but also from common practice. It always applies when online surveys are carried out from Germany. It also applies when online surveys are carried out from abroad in order to conduct scientific research in Germany.

The principles and procedures described in this guideline represent, inter alia, the result of weighing up the personal rights of the data subjects on the one hand, and the right to conduct research, together with the resulting methodological requirements, as well as the freedom of information on the other. However, the issuers of this guideline cannot guarantee indemnity. It cannot be ruled out that, if these should be weighed up at a later time or by other authorities, stricter measures might result concerning the permissibility of the procedures described above.

First edition October 2000, last revision January 2021

Standard texts

1. A sample consent form for the use of techniques for recording user behaviour for research purposes

We (research agency) would like to use/store ... (technology for recording user behaviour) on your device. ... (technology for recording user behaviour) is called and is used solely for scientific purposes.

... (technology for recording user behaviour) will be used exclusively for the named research purpose(s) of this study and will be deactivated after its conclusion on By consenting to the storage/use of ... (technology for recording behaviour) you are helping us to conduct the research.

You can delete ... (technology for recording behaviour) from your device yourself at any time. You can of course withdraw your consent to the processing of personal data processed by means of ... (technology for recording behaviour) at any time with effect for the future, insofar as it is linked to an identifiable natural person and a data record can be attributed to you. Such a withdrawal of consent can be made by sending an email to ... (insert email address). Further data protection information according to Art. 12 et seq. EU-GDPR (including information on the controller, legal basis and your rights) can be found here: [LINK](#) to the homepage of the research agency.

May we (research agency) store (technology for recording behaviour) by the name of on your device?

yes no

2. Consent to storing the address for repeat or follow-up surveys (if required):

Thank you very much for giving us this information.

Finally, we have one further request: May we contact you again when we conduct another study for market and social research purposes? In the meantime, we would store your name and email address but keep them separate from the information you were kind enough to provide today. As with today's survey, any later survey will be analysed in an anonymous form. You can withdraw your consent at any time with effect for the future. For further information, please visit... (name internet address here).

3. Statement on data protection and the total confidentiality of your responses to verbal or written interviews

(Name of research agency) operates in accordance with the provisions of the European General Data Protection Regulation (EU-GDPR) and all other data protection regulations.

This also applies to a repeat or follow-up survey, where it is important to conduct another interview with the same person after a certain period of time and to perform the statistical analysis in such a way that the information from several surveys is linked using a code number.

Here too: **No data will be transferred by which you can be personally identified!**

As in the case of single surveys, the research findings are presented exclusively **in an anonymous form**. This means: No one can tell from the results which person provided the information. Overleaf, we have provided an example of the path taken by your data from the time that it is collected up until the completely anonymous table of results.

If the person being asked to participate is under the age of 18 years and no adult is currently present: Please also show this form to your parents and ask them to approve and acknowledge it.

Responsible for compliance with the data protection regulations:

(Name and full address of the research agency)

(Name of the head of the research agency)

(Name of data protection officer)

What happens to your information?

1. Your answers to the questions are entered into the form by our employee or by yourself, for example like this:

What means of transport do you mainly use to get to work?

National rail service (...) Suburban/underground railway (...) Bus (...)
etc.

2. The address and the question section are separated from each other by (name of research agency). Any discrepancies in the answers are clarified beforehand, to ensure that only correct data is processed. The address and question section are given a code number.

Anyone seeing the questionnaire, therefore, does not know which person gave the answer. The address remains with (name of research agency), but only until the overall study has been completed. It is used only to conduct random checks on the interviewers (by calling you on the phone or sending you a postcard asking you to confirm that the interview was conducted) and, where appropriate, to visit, write to or call you again later for a further interview.

3. Your answers to the questions asked are converted into numbers and stored **without your name and address** (i.e. they are anonymised) for the analysis.

4. The interview data (without names and addresses) is then analysed by a computer. For example, the computer might count all the responses per mode of transport and calculate the results as a percentage.

5. The overall result and the results of subgroups (e. g. blue-collar workers, white-collar workers) are then printed in the form of a table:

Which means of transport?

	Total	Blue	White
National rail service	10 %	15 %	7 %
Suburban/underground railway	5 %	7 %	3 %
Bus	25 %	20 %	30 %

6. In the case of a repeat or follow-up survey, too, your name and address will always be separated from the data in the question section. During the analysis, the computer compares the responses for each person – while performing its calculations –, but it does this using the code number (never using names!) and then prints the results anonymously, just like in a single survey.

7. In all cases:

- Participation in the interview is **voluntary**. If you choose not to participate you will not suffer any disadvantages.
- Needless to say, (name of research agency) complies with **all data protection regulations**.

You can be sure that

- no one will know what answers you have given.
- your name and address will not be disclosed to any third parties.
- no individual data that would allow you to be personally identified will be passed on to any third parties.

Thank you for very much for your participation and your trust!

Guideline on Recordings and Observations in Market and Social Research

This English version of this Guideline is a translation of the original German version; in the event of variances, the German version shall take precedence over the English translation.

This guideline is issued by the associations for market and social research in Germany:

- 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.

1 Introduction

Observations and recordings are carried out exclusively for the purpose of scientific evaluation and analysis. Recordings conducted during telephone surveys for quality control purposes are governed by the Telephone Guideline.

This guideline is always to be applied in conjunction with the “ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics” prefaced by the “Declaration for the Territory of the Federal Republic of Germany”, as well as the various guidelines issued by associations for market and social research in Germany.

2 Consent

Since audio/video recordings involve the storage of original sound and/or image data, it is necessary to obtain the consent of the participants in the discussion or the respondents in the interview (**referred to in the following as Data Subjects**) to the storage of such data – over and beyond their willingness to take part – before the recording can be made. The consent form must explicitly include details of the recipients to whom original sound and/or image data from the audio/video recordings will be transmitted.

This consent is only valid in connection with the declarations that must be made in this context towards the Data Subjects, in particular the assurance that research findings will only be presented in an anonymised form and that data will not be transmitted to third parties in such a way as to allow individuals to be identified.

A sample “Consent to Video/Audio Recordings and Observations” form is attached as an appendix to this guideline.

3 Requirement of anonymity

In order to protect the anonymity of the participants in a group discussion during the group discussion itself (and hence also while it is being recorded), the data subjects must not be addressed by their respective last names. The Data Subjects must be told at the beginning of the group discussion that they must not introduce themselves by their respective last names. Likewise, the Data Subjects should not introduce themselves and address each other by their first names, unless this is necessary for methodological reasons.

The rules laid down in the “Guideline on the Handling of Addresses in Market and Social Research” apply when handling the addresses of participants in group discussions and qualitative interviews.

4 Participation by the client

4.1 Clients who are not market research agencies (hereinafter referred to as End Client(s))

If the End Client commissioning a group discussion wishes to get an impression of a discussion or an individual interview for himself/herself – beyond the report submitted by the agency conducting the research – this request may only be granted provided the following conditions are met:

1. Representatives of the End Client **observe the event either on site, or via an audio or video conference or via a stream**. This procedure is permissible if the Data Subjects have been informed accordingly in advance and have given their consent, and if the persons observing the event have signed the “**Declaration of Commitment by End Clients on Observations and Recordings for the Purposes of Market and Social Research**” and the “**Personal Undertaking to Comply with the Data Protection Requirements of the General Data Protection Regulation**” attached to this guideline, and have sent them to the agency/studio beforehand.

In addition, any observations must take place in closed rooms to which only those persons have access who have signed the aforementioned written undertakings and have submitted them to the agency/studio beforehand.

2. A representative of the End Client **participates in the group discussion** after he/she has been **introduced to all Data Subjects in his/her capacity as an End Client**, and he or

she as well as any observers have signed the “Declaration of Commitment by End Clients on Observations and Recordings for the Purposes of Market and Social Research” and the “**Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation**” attached to this guideline, and have sent them to the agency/studio beforehand. There are no legal reasons against adopting this procedure, however – depending on the topic – methodological reasons may exist.

3. The End Client **participates in the group discussion but does not reveal him or herself as such**. This procedure may only be adopted if the participation of the End Client is necessary in order to achieve the research goal and if compelling methodological reasons exist that preclude his or her capacity as a End Client from being made known during the group discussion. In addition, it is necessary to examine on a case-by-case basis whether the requirements of a legal basis, such as Art. 6(1)(f) GDPR, are met. Furthermore, this End Client representative and any observers must have signed the “**Declaration of Commitment by End Clients on Observations and Recordings for the Purposes of Market and Social Research**” and the “**Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation**” attached to this guideline, and have sent them to the agency/studio beforehand.

4. The End Client **receives the audio and/or video recordings for research purposes**. In this case, it is necessary that

- the End Client has signed the “**Declaration of Commitment by End Clients on Observations and Recordings for the Purposes of Market and Social Research**” and the “**Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation**” attached to this guideline as samples and sent them to the agency/studio before receiving the recording; and
- all Data Subjects have been informed in advance, with reference to these written undertakings, and have given their consent. A sample “**Consent to Video/Audio Recordings and Observations**” form is attached to this policy.

In particular, the rules for End Clients set out in the “**Declaration of Commitment by End Clients on Observations and Recordings for the Purposes of Market and Social Research**” must be observed, in particular specifying that recordings must be deleted no later than 3 months after receipt.

5. **All** the different options listed above require that the data subject(s) is/are **not known to** the End Client. Should this be found not to be the case, either the data subject(s) or the End Client must be excluded from the observation. If the End Client is excluded, the End Client must not receive any recordings either.

4.2 Market research agencies as clients

The above restrictions do not apply when the relationship in question is an internal one between market research agencies. See the sample texts “**Declaration of Commitment for Research Agencies Commissioning Observations and Recordings for the Purposes of Market and Social Research**”

and the “**Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation**” in the appendix for the duties of the market research agency.

5 Observations of behaviour in special cases

Observations of behaviour **about which the Data Subjects cannot be told in advance for methodological reasons** (e.g. studying their reading behaviour while browsing through a magazine) must not take place in a situation where the observed person is completely alone in a room and may thus assume himself/herself **to be unobserved**.

Instead of asking the person’s consent beforehand, he/she shall be informed afterwards and asked afterwards to consent to the recordings or results of the observation obtained by other means being used for the purpose of the study. Providing general information before the observation is made (e.g. asking the individual to come to a studio and take part in a test there) is not a substitute for requesting the consent to using the observation after the event.

6 Special features of in-home projects and on the premises of End Clients

In these cases, the following rules apply in addition to those listed above:

1. The interviewer and the data subject must always give their consent to the participation of the agency / End Client commissioning the research and other participating persons at the time the Data Subjects are recruited.
2. Special protective measures must be in place to enforce anonymity, in particular
 - the documented consent of the interviewers must specifically name the client commissioning the research and/or the End Client receiving the research findings,
 - the data subject must be informed in the same way as the interviewers, in sufficient time before the study; the data subject must have given his or her documented consent,
 - the participating persons must sign the “**Personal Declaration of Commitment to Comply with the Data Protection Requirements under the GDPR**” attached as an appendix to this guideline and send it to the agency conducting the research beforehand,
 - the agency/End Client commissioning the research must have signed the “**Declaration of Commitment for Research Agencies Commissioning Observations and Recordings for the Purposes of Market and Social Research**” and the “**Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation**” attached as an appendix to this guideline and have transmitted them to the agency conducting the research before the study is conducted.
 - all concerns with regard to the protection of minors must be examined and taken into account with special care before the study commences,
 - the Data Subjects must be informed before the study is carried out that they can terminate the interview at any time,
 - the addresses of the Data Subjects must not be disclosed to the client,
 - audio, video, photo and streaming recordings may only be made by the agency conducting the research or by its data processors.

- In addition, it is only permissible to conduct in-home observations if the following conditions are met:
 - o The Data Subjects must be informed before the study is carried out that they can ask the interviewers present as well as other participants to leave their private home immediately at any time,
 - o the addresses of the persons interviewed must not be disclosed to the client even if travelling to the location together and conducting the in-home interview together,
 - o before carrying out the study, the agency conducting the research must ensure that all identifying features (in particular name plates on doorbells or letter boxes, family photos, etc.) are removed or covered up,
 - o the presence of the client during in-home observations is only permissible if there are compelling methodological reasons.

Allowing the End Client to participate in in-home projects as well as conducting the project on the End Client's premises may distort the research findings.

7 Final provisions and disclaimer

This guideline forms **part of the Code of Professional Conduct** that governs German market and social research, resulting as they do from the **law** and the **methodological standards**, but also from **common practice**. It always applies when recordings and observations of group discussions and qualitative interviews are carried out in Germany or from Germany. It therefore also applies when they are carried out from abroad in order to conduct scientific research in Germany.

The principles and procedures described in this guideline represent, inter alia, the result of weighing up the **personal rights of the Data Subjects** on the one hand, and the **right to conduct research**, together with the resulting methodological requirements, as well as the **freedom of information** on the other. However, the issuers cannot guarantee indemnity. If the issues are weighed up at a later time or by other authorities, it cannot be ruled out that different or stricter standards may result regarding the permissibility and use of recordings and observations of group discussions and qualitative interviews.

First version June 1995, last revision 2020.

**Declaration of Commitment by End Clients on Observations and Recordings for the Purposes of
Market and Social Research**

The End Client identified below will receive the following from the agency conducting the research for the study _____
(name of study/method) for **research purposes** (please check):

- audio recordings
- video recordings
- the opportunity to observe via live stream/audio conference/video conference
- the opportunity to observe in an observation room
- the opportunity to observe on the Data Subject's premises
- the opportunity to observe on the End Client's premises
- other opportunities, namely _____

For all the features checked above, the subjects must be **informed** and **have given their prior consent**.
This consent is documented by the ... (agency, studio or recruiter).

The End Client hereby commits her-/himself as follows:

1. Without exception, recordings and observations will only be carried out in compliance with the "Guideline on Recordings and Observations in Market and Social Research".
2. Recordings and observations will only be made for research purposes and will be used only for the purpose of the research objective.
3. No attempt will be made to de-anonymise the data, and any such attempt will be prevented. No independent sound recordings, photos or film recordings will be made and no notes will be taken that are or can be related to individual persons.
4. Permission to observe and use recordings is restricted to such persons who have signed the "Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation (GDPR)" attached as an appendix and have sent this to the agency/studio conducting the research beforehand.
5. The "Consent to Video/Audio Recordings and Observations", which Data Subjects must sign prior to the recording, states who will receive the recordings.
6. Observations and use of recordings are only permissible in closed rooms to which only those persons have access who have signed the aforementioned "Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation" and who have submitted this to the agency/studio beforehand.
7. Recordings must be deleted no later than three months after receipt.

This Declaration of Commitment is part of the "Guideline on Recordings and Observations in Market and Social Research" and thus part of the Code of Professional Conduct for German Market and Social Research.

End Client (name, address):

Agency conducting the research:
(Agency Stamp)

Authorised to issue this declaration:

(Name)

(Place)

(Position in the company)

(Date)

**Declaration of Commitment for Research Agencies Commissioning Observations and Recordings for the Purposes of
Market and Social Research**

The agency commissioning the research identified below will receive the following from the agency conducting the research for the study _____ (name of study/method) for **research purposes** (please check):

- audio recordings
- video recordings
- the opportunity to observe via live stream/audio conference/video conference
- the opportunity to observe in an observation room
- the opportunity to observe on the subject's premises
- the opportunity to observe on the End Client's premises
- other, namely _____

For all the features checked above, the subjects must be **informed and have given their prior consent**.

This consent is documented by the ... (agency, studio or recruiter).

The agency commissioning the research hereby commits her-/himself as follows.

1. Insofar as End Clients will observe or receive recordings, the "Declaration of Commitment by End Clients on Observations and Recordings for the Purposes of Market and Social Research" must be signed beforehand
2. Without exception, recordings and observations will only be carried out in compliance with the "Guideline on Recordings and Observations in Market and Social Research".3. Recordings and observations will only be made for research purposes and will be used only for the purpose of the research objective.
4. No attempt will be made to de-anonymise the data, and any such attempt will be prevented. No independent sound recordings, photos or film recordings will be made and no notes will be taken that are or can be related to individual persons.
5. Permission to observe and use recordings is restricted to such persons who have signed the "Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation (GDPR)" attached as an appendix and have sent this to agency conducting the research beforehand.
6. The "Consent to Video/Audio Recordings and Observations", which Data Subjects must sign prior to the recording, states who will receive the recordings.
7. Observations and use of recordings are only permissible in closed rooms to which only those persons have access who have signed the aforementioned "Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation" and who have submitted this to the agency/studio beforehand.
8. Recordings must be deleted no later than ... months (please specify, but no longer than 12 months) after receipt.

This written declaration is part of the "Guideline on Recordings and Observations in Market and Social Research" and thus part of the Code of Professional Conduct for German Market and Social Research.

Agency commissioning the research (Name, Address):

Agency conducting the research:

(Agency Stamp)

Authorised to issue this declaration:

(Name)

(Place)

(Position in the company)

(Date)

**Personal Declaration of Commitment to Comply with the Data Protection Requirements according to the
General Data Protection Regulation (GDPR)**

I understand that according to the “Guideline on Recordings and Observations in Market and Social Research” issued by the associations for market and social research in Germany:

- 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.

This Declaration of Commitment must be signed and presented to the agency conducting the research in order for recordings and observations to be permissible, e.g. in the case of group discussions and qualitative interviews in market and social research. The persons involved at the agency or End Client commissioning the research must therefore sign this personal Declaration of Commitment to comply with the data protection requirements in accordance with the General Data Protection Regulation (GDPR) and send it to the agency conducting the research before the study.

I will participate as an observer in the study on the topic of ... (Client: ..., Contractor: ...) in ... (Place/Address) on ... [or: “I will receive recordings for the study on the topic of ... (Client: ..., Contractor: ...) in ... (Place/Address)”] No attempt will be made to de-anonymise the data, and any such attempt will be prevented. I am aware that I am not permitted to take photos or make sound or video recordings or to take notes that are or can be related to individual persons.

I have been informed that it is prohibited to process personal data without authorisation. Personal data may therefore only be processed if permitted by consent or a legal regulation, or if processing such data is legally mandatory (Art. 6 GDPR). The principles of the GDPR for processing personal data are set out in Art. 5(1) GDPR and essentially include the following obligations:

Personal data shall be:

- processed lawfully and in a transparent manner in relation to the data subject;
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (“data minimisation”);
- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- kept in a form which permits identification of Data Subjects for no longer than is necessary for the purposes for which the personal data are processed;
- processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (“integrity and confidentiality”).

I understand that if data is processed that is subject to the secrecy of social data, it must be treated confidentially by me to the same extent as it was treated confidentially by its original transmitter.

I understand that any violation of this obligation may be punishable by a fine and/or imprisonment and that a violation may at the same time constitute a breach of contractual obligations. Culpable violations of this obligation may also result in claims for damages (under civil law). Any separate Declaration of Commitment to maintain confidentiality shall not be affected by this declaration.

This Declaration of Commitment shall continue to apply even after I have ceased to work for my current employer/client. With my signature, I confirm this Declaration of Commitment. I have received a copy of this document.

Name, First name:

Place / Date: **Signature:**

Consent to Video/Audio Recordings and Observations

Given by Ms / Mr ... (Data Subject)

to

... (hereinafter the Agency)

and

... (hereinafter the End Client)

Alternatively – if justifiable and necessary for methodological reasons: For methodological reasons, in order to prevent any bias, the name of the End Client will not be disclosed to you until after the study has been completed.

We (the Agency) thank you for your participation in this study on the subject of... Please read the following information carefully and declare your consent by signing below.

Video and/or audio recordings are to be made on (date) at (address of the premises used for the study) by ... (agency, contracted service provider, streaming provider, etc.). These recordings will be used by the End Client [and, if applicable,]¹ exclusively for research purposes within the scope of this study. Using them for other purposes (e.g. advertising purposes) is expressly not permitted.

The End Client will not be told your last name or your address.

If you are informed accordingly at the beginning of the observation, the End Client² will be able to observe the discussion through the one-way mirror or as a live stream.

The video and/or audio recordings will only be passed on to the End Client [and, if applicable, ...]² for inspection after he or she has signed a so-called “Declaration of Commitment by End Clients/Agencies Commissioning Research”. In this declaration, the End Client commits her-/himself to the following:

1. Without exception, recordings and observations will only be carried out in compliance with the “Guideline on Recordings and Observations in Market and Social Research”.² Recordings and observations will only be made for research purposes and will be used only for this purpose of the research objective.
3. No attempt will be made to de-anonymise the data, and any such attempt will be prevented. No independent sound recordings, photos or film recordings will be made and no notes will be taken that are or can be related to individual persons.
4. Permission to observe and use recordings is restricted to such persons that have signed the “Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation (GDPR)” attached as an appendix and have sent this to agency/studio conducting the research beforehand.
5. Observations and use of recordings are only permissible in closed rooms to which only those persons have access who have signed the aforementioned “Personal Declaration of Commitment to Comply with the Data Protection Requirements of the General Data Protection Regulation” and who have sent this to the agency/studio beforehand.
6. This consent form contains details of who will receive the recordings.
7. Recordings must be deleted no later than three months after receipt.

The End Client [and, if applicable, ...]² will process your data within the European Union or the European Economic Area.

The Agency is responsible for processing the video and audio recordings in accordance with Art. 4 (7) EU General Data Protection Regulation (GDPR).

The data will be deleted at the Agency no later than ... months (please specify, but no longer than 12 months) after the end of the study.

You have the following rights with respect to the Agency regarding the personal data pertaining to you:

Right of access (Art. 15 GDPR),
Right to rectification (Art. 16 GDPR),
Right to erasure, “right to be forgotten” (Art. 17 GDPR),
Right to restriction of processing (Art. 18 GDPR),
Right to data portability (Art. 20 GDPR),
Right to object to processing (Art. 21 GDPR).

Furthermore, you have the right to lodge a complaint with the data-privacy authorities concerning the processing of your personal data by us.

¹ and, if applicable, other recipients of personal data: Please enter details!

You may also contact the data protection officer of the controller: ... (insert contact details of the Agency's data protection officer).

I hereby confirm that I have read this document and have had the opportunity to ask questions.

By signing below, I give my consent (Art. 6(1)(a) EU General Data Protection Regulation – GDPR) for the Agency and its processors (according to Art. 28 GDPR, such as technical service providers, videographers, translators, cloud providers or similar) to process the video and audio files for the purpose of this study and to share them with the End Client¹ for research purposes.

I am aware that I can revoke my consent at any time with effect for the future.

Such revocation can be made without giving reasons and will have no negative consequences for me.

If I have signed a confidentiality agreement, this will not be affected by the revocation and will continue to apply.

Date, Signature

Name in block letters

Guideline on Interviewing Minors

This English version of this Guideline is a translation of the original German version; in the event of variances, the German version shall take precedence over the English translation.

This guideline is issued by the associations for market and social research in Germany:

- ADM Arbeitskreis Deutscher Markt- und Sozialforschungsinstitute e. V.
- Arbeitsgemeinschaft Sozialwissenschaftlicher Institute e. V. (ASI)
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1 Introduction

For the purposes of this guideline, minors are children and adolescents under the age of 18. First of all, interviews conducted with such persons are, as a matter of principle, subject to the same rules as those governing interviews with adults.

In essence, these rules state that it is necessary

- to point out the voluntary nature of participation and
- to obtain consent for the processing and anonymised use of the data collected.

The rules laid down in the “Guideline on the Handling of Addresses in Market and Social Research” apply when handling the addresses of respondents.

For professional ethical and legal reasons, however, further regulations and restrictions must be observed, which are the subject of this guideline.

The rules of this guideline apply to all data collection procedures and methods.

This guideline is always to be applied in conjunction with the “ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics” prefaced by the “Declaration for the Territory of the Federal Republic of Germany”, as well as the various guidelines issued by associations for market and social research in Germany.

2 Consent

The high standards that apply for the comprehensibility and transparency of the wording used in declarations of consent must be satisfied in an age-appropriate manner for minors.

Thus the comprehensibility to the target group determines the extent to which the necessary information and notifications have been conveyed in a precise, comprehensible and easily accessible form and in clear and simple language.

3 Professional ethics considerations

Minors are subject to special protective regulations. This also implies that they must receive special treatment in connection with surveys. The following questions need to be considered:

- Can it be legally admissibly proven that they had the capability to understand?
- In which locations / on which occasions should / may they be interviewed? (cf. Section 5)
- On which topics and contents should interviews be conducted? (cf. Section 7)

4 Age limits for consent

Taking into account the above aspects, the following age limits and restrictions are therefore laid down, regardless of whether or not personal data is processed:

4.1 Minors not yet 14 years old

For this age group, the custodian’s consent must always be obtained for the recruitment and the interview.

4.2 Minors between the ages of 14 and up to and including 17 years

For this age group, the decision as to whether an interview may be conducted without the custodian’s consent depends on the location and subject matter of the interview, as well as the minor’s capability to understand. The decisive factor in assessing the capability to understand is whether the minor is able to understand the consequences of his or her data being used, and to take a position and to express an opinion about those consequences.

In the case of Internet-based surveys, in which the personal data of minors up to and including the age of 15 is processed, the custodian’s consent is required in accordance with Art. 8(1) EU-GDPR.

5 Venue of the interview

If the interview takes place in a private home, interviews with minors must **not** take place **without the knowledge of an adult custodian who is present** in the home. This includes the requirement that an interviewer **may not enter a home if no adult custodian is present** together with the minor at the time. An exception can be made when the appointment for the interview has been previously made, to which an adult custodian has given his or her consent. This consent must be documented in writing.

If a minor is interviewed at a test studio, it must be decided and documented whether the custodian's consent is necessary or can be waived, taking into account, among other things, the other persons present, the premises, the interview situation and the type, subject matter and time of the interview.

6 Special topics according to Art. 9 EU-GDPR

If interviews cover special topics as described in Art. 9 EU-GDPR, the capability to understand must always be determined individually from case to case. These special topics include questions on the subject of

- racial¹ and ethnic origin,
- political opinions,
- religious or philosophical beliefs, or
- trade union membership, as well as
- data concerning health or
- data concerning a natural person's sex life or sexual orientation, or
- genetic data or biometric data

which are individually collected.”

7 Contents and subject matters of interviews

The contents and subject matters of interviews with minors are the responsibility of the agency conducting the research. For reasons of research ethics, however, the **manner** in which the topics are dealt with is subject to certain limitations, which the researcher in charge at the agency must decide upon in each case. Interview situations are generally not permissible in which minors are likely to be scared or frightened or placed in an (induced) conflict, with their custodians, for example. Particular care is necessary when conducting **product tests** with minors.

Information about the intended test must be provided beforehand, in order to ensure that any prohibitions imposed by the custodians are not undermined. If no custodian is present when certain products are consumed or tested (e.g. certain confectionery or products that are subject to confessional rules), it must be ascertained before testing these products whether the minor is prohibited from consuming or using them. If a prohibition by the custodian does exist, then this must not be violated in a studio test either.

Products whose **distribution** among minors is **subject to legal restrictions** must **not** be offered to minors for testing, even with the consent of a **custodian**.

8 Presence of a custodian during the interview

As a matter of principle, the wish for a custodian to be present has priority over any methodological considerations (such as the desire to obtain uninfluenced responses). Nevertheless, it is permissible to explain the reasons to the custodian and to ask for permission to conduct the interview with the minor **in private**. If this request is not granted and conducting the interview in the presence of the custodian is not methodologically viable, the interview cannot be carried out.

When explaining the reasons why the interview with the minor is to be conducted in private, it is sensible and helpful to allow the custodian to see the questionnaire **beforehand**. If the custodian wishes to see the **completed** questionnaire **afterwards**, this request should be handled on a case to case basis and taking into account the respondent's age. As a matter of principle, the **data protection** rights and rights deriving from the rules of professional conduct **also apply to minors**.

If a custodian makes his or her consent conditional upon seeing the completed questionnaire afterwards, the interviewer must have specific instructions for each particular case and if necessary, ascertain at the time whether the minor is willing to participate in the interview under these circumstances, and – if so – whether uninfluenced responses can still be expected. If not, then it will be necessary to refrain from conducting the interview in this situation, too.

9 Surveys among school classes

The same is true for surveys among **school classes**, in which children and adolescents complete questionnaires or are questioned by an interviewer on school premises – having previously obtained the permission of those authorities specified in the state school laws. Whether the **additional consent of the custodian** is necessary in such cases depends on the regulations on age groups listed above and the regulations in the respective state school laws. Irrespective of this, the legal representatives' consent is always necessary when the data collected during interviews with school classes also includes **personal data of the legal representatives**.

10 Definition of the custodian for the purposes of this guideline

Generally speaking, minors are jointly represented by their parents as their custodians (§ 1629 German Civil Code, BGB). This custodianship can be transferred by the parents to other persons.

As long as the surveys concern matters of daily life and not the above-mentioned special topics within the meaning of Art. 9 EU-GDPR and as long as no impairment of the child's well-being is to be expected, the consent of one custodian

¹ EU-GDPR, Recital 51, Sentence 2: “Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term ‘racial origin’ in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races.”

can generally be assumed to be sufficient, since the data will only be processed anonymously after the analysis. However, reliance should not be placed on the consent of only one custodian if it is apparent that another custodian objects.

11 Data protection impact assessment

The fact that minors are being interviewed must receive special consideration when carrying out a data protection impact assessment (Art. 35 EU-GDPR).

12 Final provisions and disclaimer

This guideline forms **part of the Code of professional Conduct** that govern German market and social research, resulting as they do from the **law** and the **methodological standards**, in particular also from **common practice**. It always applies when scientific interviews for market and social research are carried out with minors in Germany or from Germany. It therefore also applies when such studies are carried out from abroad in order to conduct scientific research in Germany.

The principles and practices described in this guideline represent, inter alia, the result of weighing up the **personal rights of the data subjects** on the one hand, and the **right to conduct research**, together with the resulting methodological requirements, as well as the **right freedom of information** on the other. However, the issuers of this guideline cannot guarantee indemnity. It cannot be ruled out that, if the relevant issues should be weighed up at a later time or by other authorities, stricter measures might result concerning the permissibility of the practices described above.

First version June 1996, last revised January 2021

Guideline on the Handling of Addresses in Market and Social Research

This English version of this Guideline is a translation of the original German version; in the event of variances, the German version shall take precedence over the English translation.

This guideline is issued by the associations for market and social research in Germany:

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- Deutsche Gesellschaft für Online-Forschung – DGOF e. V.

1 Introduction

This guideline defines and specifies how the data protection provisions are to be applied to the handling of addresses and – where applicable – other personal data, when carrying out studies for market and social research. Beyond this, it prescribes the ethical and professional rules of conduct associated with them. Market and social research is used as a generic term which also includes, in particular, media and opinion research.

This guideline is always to be applied in conjunction with the “ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics” prefaced by the “Declaration for the Territory of the Federal Republic of Germany”, as well as the various guidelines issued by the associations for market and social research in Germany.

2 Legal framework

The EU-GDPR and the new German Federal Data Protection Act (BDSG) govern the processing of personal data, irrespective of whether this is done using data processing systems or non-automated filing systems.

The addresses of natural persons are per se personal data; the addresses of companies and organizations are personal data if they also contain names of individuals (owners, employees) or if they can be assigned to specific or identifiable individuals, for example through the description of a function (e. g. head of purchasing department) or the expression of an opinion.

Personal data that is subject to the secrecy of social data is governed by the regulations of § 35 German Social Code I (SGB I).

In this guideline, the term addresses refer to any information which allows the data subjects to be contacted directly; in particular their name, postal address, phone number, fax number, email address.

The EU-GDPR and other data protection provisions in other laws do not cover survey or observation data that is not linked to an identifiable natural person. It must not be possible for the data to be linked to an identifiable natural person, either directly via their name and/or address or indirectly by being identifiable based on other characteristics.

3 Definitions of key terms

3.1 Personal data

Personal data is “any information relating to an identified or identifiable natural person (“data subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person” (Article 4(1) EU-GDPR).

3.2 Processing

According to Article 2, the EU-GDPR applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

Processing means “any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction” (Article 4(2) EU-GDPR).

3.3 Processing special categories of personal data

“Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data,

biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited" (Article 9 EU-GDPR). Article 9(2) EU-GDPR provides for exceptions to this, for example when the data subject gives explicit consent (Article 9(2a) EU-GDPR).

According to § 27 of the new BDSG (German Federal Data Protection Act), by derogation from Article 9(1) EU-GDPR, the processing of special categories of personal data shall be permitted also without consent for scientific research purposes, if such processing is necessary for these purposes and the interests of the controller in processing the data substantially outweigh those of the data subject in not processing the data. The controller must provide for appropriate and specific measures to safeguard the interests of the data subject (§ 27 (1) BDSG-new, German Federal Data Protection Act).

Since the sensitivity of personal data also depends on the context, a broad definition of the category of "special categories of personal data" needs to be chosen in market and social research. If special categories of personal data are the only data that is to be collected in market and social research, explicit consent must be obtained at the start of the interview. However, if special categories of personal data are to be collected together with other personal data, the necessary explicit consent must be obtained by means of an additional transitional question – the answer to which must be recorded – or by an appropriate wording of the question and response options, unless the questions are part of an extensive set of questions that is asked at the beginning of the interview anyway. Respondents who refuse to answer questions about a "special" subject matter must be directed to the next set of questions.

3.4 Anonymisation and pseudonymisation

Personal data which has undergone pseudonymisation but which could be attributed to a natural person by the use of additional information should be considered to be information on an identifiable natural person (Recital 26 EU-GDPR).

Pseudonymous data is not anonymous data. If data is collected and stored from the outset without reference to an identifiable natural person, and if the data is anonymous information, i. e. information which does not relate to an identified or identifiable natural person or to personal data anonymised in such a manner that the data subject is not or no longer identifiable, then the EU-GDPR does not apply (any longer). To determine whether data is pseudonymised or anonymised, i. e. whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, either by the controller or by another person, to identify the natural person directly or indirectly (Recital 26 EU-GDPR).

3.4.1 Anonymisation

Anonymisation is "the modification of personal data so that information concerning personal or material circumstances cannot be attributed to a specific or identifiable natural person or that such attribution would require a disproportionate amount of time, expense and effort" (cf. Gola, Commentary on EU-GDPR, 2nd Edition, Article 4, margin number 41).

The data collected during market and social research must be anonymised as soon as this is possible in the light of the purpose of the research project for which it was collected. In addition, details must be omitted from data containing no reference to an address if such details could result in the identification of an individual (e. g. the vehicle identity number of a car, or a combination of profession and place of residence).

3.4.2 Pseudonymisation

Pseudonymisation is "the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person" (Article 4(5) EU-GDPR).

Pseudonymised data are still personal data.

The data collected during market and social research must be pseudonymised as soon as this is possible in the light of the purpose of the research project for which it was collected. To do so, address data and survey data are stored separately and shared code numbers are assigned to both, in order to allow the address data and survey data to be recombined. In the case of single surveys, this is only done temporarily and exclusively for purposes of performing quality checks on the data collected; in the case of follow-up or repeat surveys, it is also done with the prior consent of the respondents until the overall study has been completed, in order to be able to link the survey data from the different interviews as necessary.

As long as it is possible to recombine the address data and survey data, the survey data, too, is considered to be personal data under the terms of the EU-GDPR and the new German Federal Data Protection Act (BDSG).

4 Origin of addresses

Addresses for the purposes of market and social research may come from the following sources:

- Publicly available sources (4.1)
- Address publishers (4.2)
- Residents' registration offices (4.3)
- Clients (4.4)
- Recruiters (4.5)

Regardless of the origin of the addresses, their use must comply with the General Data Protection Regulation and the professional code of conduct in German market and social research.

4.1 Addresses from publicly available sources

The use of addresses from publicly available sources is based on Article 6(1)(f) EU-GDPR as a legal basis. It may be assumed in general that the interests of the data controller in using the data for the purpose of anonymous and scientific market and social research outweigh the data subject's interests in protecting his or her data.

4.2 Addresses from address publishers which are based on consent

It is not permissible for personal data collected in the course of an interview or observation to be transferred to the address publishers. It is only permissible to report to the address publishers by name double entries and addresses that cannot be located or that do not belong to the target group. Reporting addresses that do not belong to the target group must be limited to this fact and must not include any adjustment of this target group feature of the address.

To the extent that the addresses do not come from publicly available sources, the purchaser must obtain evidence of consent (for example, by examining a sufficiently large sample of the consent forms claimed by the seller) and verify their content to determine whether they are sufficient for the intended use.

4.3 Addresses from residents' registration offices

The use of addresses from residents' registration offices requires a public interest. Proof of this is required by the residents' registration offices in accordance with the relevant laws and regulations for their implementation, which also govern the handling of addresses.

4.4 Addresses from clients

Addresses may be made available to research agencies by clients with a data processing agreement in order to use these addresses for contacting purposes as bound by instructions. In this case too, the requirement of anonymity applies. The client remains the controller with respect to the data subjects in terms of their contact details. The agency becomes the controller of the data collected after contact has been made (survey data), including whether or not a contacted person participated, as this constitutes personal data.

When addresses are transmitted, the provisions of the EU-GDPR and, where applicable, other provisions, such as the provisions of the German Social Code (for all data that is subject to the secrecy of social data pursuant to § 35 SGB I), the German Telecommunications act (requirement of consent for data from providers of telecommunications services pursuant to § 95(2) TKG), must be observed.

Providing information about double entries or untraceable addresses by name is only permissible if it is restricted to this fact and the main purpose of the contract is not to clean up the address database maintained by the client (in which case it would not be for the purpose of research).

4.5 Data from recruiters

To the extent that personal data is transmitted to agencies by recruiters in a specific case, this is not a case of data processing and, in principle, not a case of joint controllership. The recruiter is and remains the controller of the addresses in its database. When these addresses are used by the agency, the agency itself is the controller within the meaning of the EU-GDPR. Should the recruiter and the agency be joint controllers in a specific case, they must enter into a contract in accordance with Art. 26 EU-GDPR.

4.6 Digression: Recruitment of respondents by treating physicians

In demographic health research, respondents for certain studies are recruited in collaboration with treating physicians. This is necessary in particular when the research goal calls for interviewing people with specific clinical conditions or health complaints and the corresponding therapies and when the respondents cannot be recruited using other screening procedures.

Two procedures are available for recruiting respondents in collaboration with treating physicians. The physician agrees to inform patients who meet the necessary criteria about the survey – while pointing out the voluntary nature of participation – and either

1. hands over a questionnaire supplied by the research agency to patients willing to participate, taking back the completed questionnaire and passing it on to the research agency conducting the research (Note: The questionnaires must contain neither the names nor the address data of the respondents, nor any other details that could lead to their identification. Nor must the physician pass on the names and address data of patients who have participated in the survey in any other form.)

or else

2. asks for the consent of patients willing to participate and passes on their names and addresses to the agency conducting the research.

In the first procedure, the patients participating in the survey do not need to release the physician from the obligation of medical confidentiality, since no personal data of the patient is passed on. In the second procedure, the physician must provide evidence that he or she has been released from the obligation of medical confidentiality.

4.7 Collaboration between research agencies

When private-sector and/or academic research agencies collaborate in market and social research (also in the capacity of contractor and client), it may be necessary for them to jointly use address data and possibly also survey data in a personalised form. The joint use or transfer of address data to the other research agency is permissible, provided the participants are adequately informed about the origin of the address and their right to object to its use when they are approached by the research agency conducting the research.

The joint use of the survey data is permissible provided the participants are informed as to the purpose and scope of the joint use of their survey data in a personalised form and they give their consent to it.

The joint use of address data and possibly also of survey data in a personalised form must be agreed upon contractually in advance by the research agencies. In most cases, a contract specifying them as being joint controllers in accordance with Art. 26 EU-GDPR is also necessary. Joint use of the data is only permissible if it occurs exclusively for research purposes.

4.8 Storage of self-collected addresses

4.8.1 Single surveys

In the case of single surveys, addresses may be stored only for conducting quality checks and where necessary for data editing before the completion of fieldwork. They must be deleted or irreversibly separated from the survey data as soon as these research steps have been completed.

4.8.2 Follow-up or repeat surveys and recruiting panel members

In the case of follow-up or repeat surveys and when recruiting panel members, names and addresses as well as selection criteria of individuals and households may be stored if the data subjects have agreed to participate in later or continuous studies and have consented to the necessary storage of their data. The selection criteria must be stored separately from the names and addresses. The merging of the data, which is necessary for selecting specific respondents, is done by means of a code number.

In follow-up or repeat surveys, too, the use of the stored data for purposes other than those research purposes communicated to the recruited individuals and households is not allowed. Storing information about previous participation is permitted in order to allow an overview of the time intervals between surveys and to avoid contacts being too frequent. Once the last intended survey has been completed, the names and address data of the respondents must be deleted. They must be deleted immediately if the respondent states in the meantime that he/she does not wish to participate in any further studies.

When individuals or households are recruited face-to-face or in writing for follow-up or repeated surveys, or for access panels, the "Statement on data protection and the total confidentiality of your responses to verbal or written interviews" must be handed over.

When they are recruited by telephone, this statement must either be sent subsequently or be handed over at the time of the first personal or written contact. If there is no personal or written contact, the statement must be sent to the respondent subsequently if the respondent requests.

In the case of online surveys, the "Statement on Data Protection" must be displayed to participants on the screen and the option of printing it out must be provided, or else it must be made available in some other suitable form.

The content of the "Statement on Data Protection" must be adapted to fit the data collection method used.

4.9 Addresses provided by private individuals

If the methodological approach used in a study requires that the addresses of additional persons belonging to the study's target group be supplied to the research agency by already existing respondents (snowball sampling), the research agency must explicitly provide those additional persons with all the information required by Article 14 EU-GDPR, including the origin of the addresses, the voluntary nature of participation and their right to object, when it asks them for their consent to participate in the study.

5 Duty to provide information and right to object

5.1 Duty to provide information

When making contact, the following information must be provided in accordance with Article 13 EU-GDPR:

- the identity of the research institution or the controller, if this is not the research institution, in a comprehensible manner that can be understood without difficulty by the data subjects
- the general purpose and the legal basis (incl. the legitimate interests) for making contact;
- the voluntary nature of participation, if this is not obvious;
- the recipients or categories of recipients of the personal data (e. g. field service provider, market research agency, research groups);
- where applicable: transfer to a third country;
- duration of storage (e. g. destruction after end of project);
- right to withdraw consent;
- the source of the personal data and the right to object to its transfer and/or use;
- the contact details of the data protection officer;
- where relevant: the existence of automated decision-making;
- the rights of access, rectification, erasure and restriction, as well as the right to object to processing and the right to lodge a complaint with the data protection supervisory authority.

If this information and further explanations cannot be communicated in a transparent and comprehensible manner, they must be given to the respondent in writing by letter, fax or email or made available for download over the Internet.

The link between the survey data and the names, telephone numbers, addresses and email addresses of the respondents must be irreversibly removed at the earliest possible time, but no later than on completion of the project.

5.2 Repeat, follow-up or panel surveys

In the case of repeat, follow-up or panel surveys, consent must also be obtained during the first interview to store the address data needed for the subsequent interview(s), such as name, telephone numbers, addresses, email addresses and selection criteria. If consent is not given, then this first interview is considered a one-time interview as in a single survey.

If consent is given to storing contact data without the respondent first being informed that contact and survey data from the initial interview will be reused for repeat or follow-up interviews, such consent is legally void.

The manner in which the repeat or follow-up interview(s) are to be conducted must be communicated at the time of the initial interview. Likewise, respondents must be informed if the nature of the repeat interview has not yet been decided.

In the case of repeat or follow-up surveys, respondents must receive suitably modified information on data protection, at the latest when they are contacted again. Depending on the target group and the topic of research, it may be useful to make this information on data protection available immediately after the initial interview.

It needs to be observed whether the initial and repeat or follow-up interview(s) will be conducted by different research institutions. The respondent's consent to repeat or follow-up surveys carried out by a different research institution must be obtained from the respondent before he or she is contacted by that research institution.

5.3 Right to object and right to withdraw

The EU-GDPR distinguishes between the right to object to processing (without consent) in accordance with Article 6(1)(f) EU-GDPR and the right to withdraw consent to data processing under Article 7(3) EU-GDPR.

5.3.1 Right to object

According to Article 21(1) EU-GDPR, the data subject shall at any time have the right to object, on grounds relating to his or her particular situation, to processing of his or her personal data which is based on Article 6(1)(f) EU-GDPR. In such cases, the controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims. Where personal data is processed for scientific research purposes, objections can only be raised if the processing is not necessary for the performance of a task carried out for reasons of public interest.

According to Article 21(4) EU-GDPR, the right referred to in Article 21(1) EU-GDPR shall be explicitly brought to the attention of the data subject at the latest at the time of the first communication with the data subject and shall be presented clearly and separately from any other information.

If the objection raised by the contacted person only applies to the processing or use of his/her data by the research agency carrying out the study, this data must be blocked on the level of the research agency. If the objection applies to the processing or use of the data for the purposes of market or opinion research in general, the research agency, in addition to blocking the data within the agency, must also inform the controller (usually the client or a mailing house) who transmitted the address data of this objection, so that the data can be blocked there, too.

5.3.2 Right to withdraw

Where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to processing of his or her personal data. The data subject shall have the right to withdraw his or her consent at any time (Article 7(3) EU-GDPR). The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

6 Use of the addresses

6.1 Addresses for gross samples

Gross samples are drawn from stored addresses belonging to the research agency, transferred from external parties or by the client, or made available under the terms of Article 28 EU-GDPR. The addresses or telephone numbers are prescribed to the interviewers in order for them to conduct the survey, or – in case of written surveys or online surveys –

they form the basis for mailing questionnaires or for email invitations to participate in the survey.

6.2 Addresses from net samples

A net sample comprises the interviews actually conducted on the basis of a gross sample. In the case of a single survey, the addresses must be separated from the survey data as soon as possible and destroyed, or they must be anonymised in such a way as to make it impossible to recombine them with the survey data. In online surveys, the address data must a priori be stored separately from the survey data or separated from the survey data when they are returned, and deleted as soon as possible.

If respondents have agreed to participate in a follow-up or repeat survey, the address data must be separated from the survey data immediately, too, and must be stored separately until they are re-used. After the last wave of surveys has been completed, and also when respondents withdraw their consent to participate in a follow-up or repeat survey, the same rules apply as for single surveys.

6.3 Augmenting a sample with secondary data

The data collected in the course of an study may be augmented with data already available to the client,

- if the research objective so requires,
- the anonymity of the respondents is preserved with respect to the client, and
- the respondents are informed about the additional initially personal (later to be anonymised) data with which the research results are to be augmented by the research agency (Art. 14 GDPR).

It needs to be observed that augmenting corporate survey data with data on production, turnover, orders etc. must not allow individual companies to become identifiable to the client either.

Since mere participation in a survey is in itself personal data, clients must not be given an address file of the net sample in order to augment the sample. Hence augmentation may only be performed on the gross sample, preferably in advance (when the addresses are transferred) or later (with the research agency matching them for the net sample).

When data is transmitted by the client for the purpose of augmenting the sample, the client is responsible for ensuring that the transferred data may lawfully be processed.

6.4 Addresses not resulting in interviews (non-responses)

The names and address data of such persons must be marked accordingly in order to be able to check the random sampling.

Reusing these addresses to increasing the sample response rate is permissible provided those people are excluded who have forbidden further contacts for this survey and/or have refused any form of participation in market and social research surveys. The addresses of such people must be deleted immediately. The remaining addresses which did not lead to an interview must be deleted analogously to the addresses in the net sample.

6.5 Marking of the gross sample by the client to avoid excessively frequent interviews

It is permissible for the client to mark the addresses of the gross sample in order to avoid repeated, multiple or excessively frequent interviews of the same person or company for methodological reasons. By contrast, it is not permissible to transmit the net sample to the client for that purpose, since the information about having participated in a study in itself already constitutes personal data.

6.6 Provision of incentives to participants

Since it is not permissible to transmit the net sample to the client, incentives to the participants of a study cannot be delivered by the client but only by the research agency carrying out the study itself, or by a party commissioned to deliver the incentives. When another party is commissioned to deliver the incentives, participants must be informed about the necessary transfer of their address data and give their consent to the transfer. The commissioned party must be contractually obliged not to pass on the addresses to third parties, to use them only for delivering the incentives and to delete them immediately afterwards.

6.7 No transfer of personal data at respondents' request

When conducting studies for market and social research, individual respondents sometimes spontaneously request that their survey data be transmitted to the client in a personalised form, despite the assurance given at the beginning of the interview that they will be rendered anonymous, or else they may ask for the client to get in touch with them.

In such cases the research agency carrying out the study is only permitted to give these persons the appropriate address at which to contact the client, since the agency is not allowed to transmit any personal data to the client. This also applies in the event of a contractual relationship according to Article 26 or 28 EU-GDPR. The permissibility of communicating the address at which to contact the client is always conditional upon the corresponding request by the respondent being made spontaneously and not being the result of a specific question or corresponding remark of the interviewer.

7 Data security measures

Pursuant to Article 32 EU-GDPR, research agencies are required to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

When processing personal data on behalf of the client pursuant to Article 28 EU-GDPR, the client shall be the controller responsible for compliance with the provisions of data protection law. This means the client is not only entitled but according to Article 28 EU-GDPR actually obliged to verify compliance with the technical and organisational measures taken by the processor before data processing begins and at regular intervals thereafter.

8 Final provisions and disclaimer

This guideline forms part of the Code of Conduct that govern German market and social research, resulting as they do from

the law and the methodological standards, but also from common practice. It always applies when studies for market and social research are carried out in Germany or from Germany. It therefore also applies when such studies are carried out from abroad in order to conduct research in Germany.

The principles and practices described in this guideline are, inter alia, the result of weighing up the personal rights of the data subjects on the one hand, and the right to conduct research, together with the resulting methodological requirements, as well as the freedom of information on the other. The issuers cannot guarantee indemnity. It cannot be ruled out that case law may result in different standards regarding the permissibility of the handling of addresses in market and social research.

First version October 1998, last revised January 2021

Sample text

Statement on data protection and the total confidentiality of your responses to verbal or written interviews

(Name of research agency) operates in accordance with the provisions of the European General Data Protection Regulation (EU-GDPR) and all other data protection regulations.

This also applies to a repeat or follow-up survey, where it is important to conduct another interview with the same person after a certain period of time and to perform the statistical analysis in such a way that the information from several surveys is linked using a code number.

Here too: **No data will be transferred by which you can be personally identified!**

As in the case of single surveys, the research findings are presented exclusively **in an anonymous form**. This means: No one can tell from the results which person provided the information. Overleaf, we have provided an example of the path taken by your data from the time that it is collected up until the completely anonymous table of results.

If the person being asked to participate is under the age of 18 years and no adult is currently present: Please also show this form to your parents and ask them to approve and acknowledge it.

Responsible for compliance with the data protection regulations:

(Name and full address of the research agency)

(Name of the head of the research agency)

(Name of data protection officer)

What happens to your information?

1. Your answers to the questions are entered into the form by our employee or by yourself, for example like this:

What means of transport do you mainly use to get to work?

National rail service (...) Suburban/underground railway (...) Bus (...)
etc.

2. The address and the question section are separated from each other by (name of research agency). Any discrepancies in the answers are clarified beforehand, to ensure that only correct data is processed. The address and question section are given a code number.

Anyone seeing the questionnaire, therefore, does not know which person gave the answer. The address remains with (name of research agency), but only until the overall study has been completed. It is used only to conduct random checks on the interviewers (by calling you on the phone or sending you a postcard asking you to confirm that the interview was conducted) and, where appropriate, to visit, write to or call you again later for a further interview.

3. Your answers to the questions asked are converted into numbers and stored **without your name and address** (i.e. they are anonymised) for the analysis.

4. The interview data (without names and addresses) is then analysed by a computer. For example, the computer might count all the responses per mode of transport and calculate the results as a percentage.

5. The overall result and the results of subgroups (e. g. blue-collar workers, white-collar workers) are then printed in the form of a table:

Which means of transport?

	Total	Blue	White
National rail service	10 %	15 %	7 %
Suburban/underground railway	5 %	7 %	3 %
Bus	25 %	20 %	30 %

6. In the case of a repeat or follow-up survey, too, your name and address will always be separated from the data in the question section. During the analysis, the computer compares the responses for each person – while performing its calculations –, but it does this using the code number (never using names!) and then prints the results anonymously, just like in a single survey.

7. In all cases:

- Participation in the interview is **voluntary**. If you choose not to participate you will not suffer any disadvantages.
- Needless to say, (name of research agency) complies with **all data protection regulations**.

You can be sure that

- no one will know what answers you have given.
- your name and address will not be disclosed to any third parties.
- no individual data that would allow you to be personally identified will be passed on to any third parties.

Thank you for very much for your participation and your trust!



Guideline on the Handling of Databases in Market and Social Research

This English version of this Guideline is a translation of the original German version; in the event of variances, the German version shall take precedence over the English translation.

This guideline is issued by the associations for market and social research in Germany:

- 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.

1 Introduction

The pluralisation of value orientations and attitudes in society and the differentiation of goods and services has led, among other things, to an individualisation of attitudes, needs and behaviours and thus of styles of consumption. The relationships between suppliers of goods and services and their customers are becoming individualised accordingly.

This guideline is always to be applied in conjunction with the “ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics” prefaced by the “Declaration for the Territory of the Federal Republic of Germany”, as well as the various guidelines issued by associations for market and social research in Germany.

Aside from the professional ethics and legal framework for market and social research laid down in the code of conduct, the scientific handling of databases – like all aspects of market and social research – also requires the compliance with the methodological requirements of market and social research, as documented in the quality standards for market and social research, as well as the principles of ethical research behaviour.

2. Definitions

2.1. Identification numbers

In this guideline, the term “identification number” refers to any result of mathematical statistical operations that is calculated, i.e. altered within the meaning of Article 4(2) EU-GDPR, from characteristics stored in databases or from data specifically collected for that purpose or from existing information, in the form of indices, types or suchlike, and that is assigned to individual data records (cases) as a statistical expected value.

2.2 Mathematical statistical classification or assignment procedures

In this guideline, the term “mathematical statistical classification or assignment procedures” refers to all procedures on the basis of which identification numbers are assigned to the individual cases recorded in a database on a case-by-case basis according to probabilities.

2.3 Databases

In this guideline, the term “database” refers to any collection of interconnected data which consist of a number of homogeneous data records (cases).

2.4 Personal databases

In this guideline, the term “personal database” refers to any database that contains personal data as defined in Art. 4(1) EU-GDPR, either exclusively or together with other types of data.

2.5 Research institutions

Research institutions can be private-sector market and social research agencies, as well as academic and university research facilities, corporate research departments, local authorities, institutions for official statistics and individual researchers working along the same lines.

3. Operators of databases

3.1 General

The databases used in market and social research can be maintained by

- research institutions (3.2.),
- their clients (3.3) or
- other institutions (3.4).

3.2 Databases maintained by research institutions

If research institutions maintain databases containing the personal data of participants in studies for market and social research, these shall be used exclusively for carrying out follow-up or repeat interviews and for organising (access) panels. They contain the names and address data of persons willing to participate in research, along with details of various

characteristics which can be used as selection criteria for participating in further studies.

Maintaining such databases is permitted if the data subjects have been informed about the processing of their personal data as required for market and social research purposes, taking into account methodological aspects, and have given their verifiable and effective consent to this.

3.3 Databases maintained by clients

The clients of market and social research are themselves responsible for ensuring that their databases are operated in accordance with legal requirements. The research institution must bring to the client's attention any legal problems, particularly in terms of the data protection laws, if it becomes aware of these while handling the databases. These problems and the corresponding notification about them must be documented by the research institution.

3.4. Databases maintained by other institutions

If personal databases maintained by other institutions are used for market and social research, these are usually qualified collections of addresses belonging to commercial suppliers of addresses, which are important when drawing samples for studies involving special target groups. The conditions that have to be met in order for the use of the data stored in such databases to be permissible are listed in detail in the "Guideline on the Handling of Addresses in Market and Social Research".

4 Ways of using databases

4.1 Five basic forms of use

Five basic ways of using databases can be distinguished in market and social research:

1. drawing samples from databases (4.2),
2. mathematical statistical analysis of databases (4.3),
3. merging databases (4.4),
4. adding research results to databases (4.5),
5. using databases to augment research results (4.6).

4.2 Drawing samples from databases

The legal provisions that are relevant to drawing samples in general, and therefore also when drawing them from databases, and to the necessary transmission of addresses in this context, are described in the "Guideline on the Handling of Addresses in Market and Social Research".

4.3 Mathematical statistical analysis of databases

When mathematical statistical analyses are conducted on data that is already stored in databases, the databases or samples drawn from them are examined using scientific methods to find possible hitherto unnoticed patterns and relationships between the characteristics recorded therein. In the process, identification numbers may be calculated and assigned to the individual cases in the database as statistical expected values. This is done using mathematical statistical classification or assignment procedures.

The mathematical statistical analysis of databases for the purposes of market and social research is only permitted if

the personal data is processed in compliance with the requirement of anonymity.

4.4 Merging databases

When databases are merged, the characteristics stored in one (receiving) database are augmented on a case-by-case basis by additional characteristics contained in the other (donating) database by means of mathematical statistical classification or assignment procedures. Precondition for this is that the two databases must contain a number of shared characteristics, so that the assignment can be carried out based on similar combinations of characteristics.

Merging databases for the purposes of market and social research is permissible as long as no personal data is processed in doing so.

4.5 Adding research results to databases; notes on consent

4.5.1 General

When research results are added to databases, the characteristics already stored in the database are augmented on a case-by-case basis by new characteristics (e.g. identification numbers) as statistical expected values. The underlying data behind the research results may have been collected either among persons included in the database or among persons not included in it.

Research results can be added to databases in different ways:

4.5.1.1 Transmitting to the client only the rules for adding results

In this method of adding research results to databases, the research institution provides the client with the mathematical rules that can be used to calculate the identification numbers and assign them on a case-by-case basis as statistical expected values.

This method of adding results is allowed under the following conditions:

- a) no results of individual respondents must be directly assigned by the research institution
- b) the client must perform the calculations and the addition of the data on his or her own.

The client is responsible for determining whether the addition of the data is legally permissible. In particular, the client must check whether the specific case involves automated individual decision-making or profiling (Art. 22 EU-GDPR) and whether the addition of data is only permissible with the consent of the data subjects.

4.5.1.2 Addition of identification numbers to client data bases by the research institution

In this method of adding research results, the client sends the database, to which the research results are to be added, to the research institution. In contrast to 4.5.1.1. "Transmitting to the client only the rules for adding results", the research institution itself carries out the calculation and the case-by-case assignment of the identification numbers, and then sends the augmented database back to the client. This approach is permissible insofar as the research institution is

acting as the processor (Art. 28 EU GDPR), as is usually true in such cases. The client must check whether the addition of the data is legally permissible. In particular, the client must check whether the specific case involves automated individual decision-making or profiling (Art. 22 EU-GDPR) and whether the addition of data is only permissible with the consent of the data subjects.

4.5.1.3 Addition of data in a personalised form

The addition of data collected by research institutions in market and social research to the databases of clients or other parties in a personalised form is not permissible.

4.6 Using databases to augment research results

The data collected in the course of an survey may be augmented with data that is already available to the client,

- if the research objective so requires,
- the anonymity of the respondents is preserved with respect to the client, and
- the respondents are informed about the additional initially personal (later to be anonymised) data with which the research results are to be augmented by the research agency (Art. 14 EU-GDPR).

It should be noted that augmenting corporate survey data with data on production, turnover, orders etc. must not allow individual companies to become identifiable to the client either.

Since mere participation in a survey is in itself personal data, clients must not be given an address file of the net sample in order to augment the sample. Hence augmentation may only be performed on the gross sample, preferably in advance (when the addresses are shared) or later (with the research agency adjusting them for the net sample).

When data is transmitted by the client for the purpose of augmenting the sample, the client is responsible for ensuring that the data may lawfully be processed.

5 Requirement of consent in the case of automated individual decision-making, including profiling, according to Art. 22 EU-GDPR

Under the professional rules and the Code of Conduct of German market and social research, it is prohibited without exception for research institutions in market and social research to decide upon the creation, execution or termination of a contractual relationship according to Article 22 EU-GDPR on the basis of probabilities.

Research results – especially identification numbers that are calculated and assigned as statistical expected values on a case-by-case basis – may be used by clients to decide whether to create, execute or terminate a contractual relationship in accordance with Art. 22 EU-GDPR on the basis of probabilities.

To the extent that the client him or herself carries out profiling, the research institutions may have an obligation to provide information to the client regarding the calculation of the identification numbers if the client is obliged to provide information to the data subject pursuant to Articles 13(2) and 15(1)(h) EU-GDPR as the controller. Nevertheless, the client

is solely responsible for checking in advance whether profiling is legally permissible.

It is expressly pointed out that the client must check whether Art. 22 EU-GDPR applies, in which case additional legal requirements must be met (including the requirement for consent, duty to provide information).

6 Final provisions and disclaimer

This guideline forms part of the Code of Conduct that govern German market and social research, resulting as they do from the law and the methodological standards, but also from common practice. It always applies when studies for market and social research are carried out in Germany or from Germany. It therefore also applies when such studies are carried out from abroad in order to conduct research in Germany.

The principles and practices described in this guideline are, inter alia, the result of weighing up the personal rights of the data subjects on the one hand, and the right to conduct research, together with the resulting methodological requirements, as well as the freedom of information on the other. The issuers of this guideline cannot guarantee indemnity. If the issues are weighed up at a later time or by other authorities, it cannot be ruled out that different standards may result regarding the permissibility of the practices described.

First version May 2005, last revision January 2021

Guideline on Surveys within and using Social Media (Social Media Guideline)

This English version of this Guideline is a translation of the original German version; in the event of variances, the German version shall take precedence over the English translation.

This “Guideline on Surveys within and using Social Media” is issued by the associations for market and social research in Germany:

- 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.

Information on how to apply the ethical and professional rules of conduct laid down in the “Social Media Guideline” and in the various documents for the self-regulation of market and social research referenced in it can be obtained from the associations listed above.

1 Purpose of the guideline

The “Social Media Guideline” is part of the system for the self-regulation of market and social research in Germany. The rules of professional conduct must also be observed and applied in this context.

The “Social Media Guideline” establishes the specific way in which the ethical and professional rules of conduct – which are already formulated in the context of the self-regulation – are to be applied to surveys that are carried out within or using social media.

This guideline is always to be applied in conjunction with the “ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics” prefaced by the “Declaration for the Territory of the Federal Republic of Germany”, as well as the various guidelines issued by associations for market and social research in Germany.

2 Definition of social media

For the purposes of this guideline, social media are defined as platforms that assist their users to communicate with each other and to exchange information and media content interactively between individuals and groups via digital channels; in particular, this includes blogs, message boards, online communities and social networking services. Social media or areas thereof are classified as “open” or “closed”, depending on how they can be accessed (for details, see Section 4.1 and 4.2.).

3 Scientific nature of the procedure

Aside from choosing a method and technique that is appropriate to the subject matter and the research objectives, another key factor that determines the scientific nature of the procedure used when carrying out surveys within or using social media is that fundamental scientific and methodological quality criteria must be observed and adhered to, e. g. objectiveness, reliability and validity.

In assessing these quality criteria, it is particularly important to examine whether and, if so, how a social medium controls or modifies access to content, e.g. by implementing restrictions on data interfaces. The nature and extent of any restrictions on the accessibility of the content must be made transparent to customers or purchasers of the analyses and results.

4 Means of accessing social media

When the ethical and professional rules of conduct for market and social research in Germany are applied to surveys within and using social media, it is necessary to make a distinction regarding the method of accessing the social media, or the areas within social media, (open or closed). This is because, although there are no fundamental differences in the way the ethical and professional rules of conduct are to be applied, certain specific peculiarities need to be observed.

The fact that a social medium is open does not automatically mean that the operator’s Terms of Use permit free, unrestricted use of the content for research purposes in every case. Whether this is so must be examined on a case-by-case basis. Naturally, the same applies to closed social media.

4.1 Public social media:

In terms of data protection legislation, open social media can be viewed as a generally accessible source. There are no restrictions on the means of access or content. According to Article 6(1)(1)(f) EU-GDPR, personal content may be processed for the purposes of market, opinion and social research, “except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.” Insofar as special categories of personal data are processed, these may only be processed within the context of Article 9 EU-GDPR and § 27 of the new German Federal Data Protection Act (BDSG), i.e.,

among other things, if the data subject has made them public him or herself or has given his or her consent.

4.2 Closed social media:

In terms of data protection legislation, closed social media are not considered as a generally accessible source. In these cases, access is controlled and – often in connection with this – content is restricted. Personal content must therefore only be processed with the consent of the data subject, pursuant to Article 6(1)(1)(a) EU-GDPR in conjunction with Article 7 EU-GDPR, since it cannot be ruled out a priori that the data subject has an interest in data being excluded which requires protection. In addition, the operator’s Terms of Use must be observed. As a rule, the respective operator of the affected area of the social medium must give his or her consent to the data being used.

4.3 Use of social media for research purposes:

When social media are used to carry out market and social research, the research institution conducting the research usually controls the means of accessing the medium, and the contents must be strictly confined to research purposes. From the point of view of data protection legislation, social media that are operated for the purpose of market and social research (e.g. so-called “market research communities” or “research communities”) cannot be viewed as generally accessible sources either. Explicit consent to the processing of their personal data for research purposes must be obtained from participants prior to their first participation.

The research institution must offer participants an easily identifiable and easy-to-use means of leaving the social medium at any time and of prohibiting any further processing of their personal data. The obligations to provide information according to Art. 12 et seq EU-GDPR must be explicitly pointed out.

5 Separation from other activities

The requirement of separating market and social research from other activities also applies, without limitation, to surveys within or using social media. Such surveys must be conducted in such a way as to be clearly and identifiably distinct from other activities in organisational and technical respects, particularly from any activities associated with direct marketing, advertising or sales promotion.

Provided the researcher or the research institution is acting solely as a passive observer, this fundamental principle of ethical and professional behaviour does not lead to any specific requirements towards participants, either for **surveys in open or in closed social media, or in open or closed areas** of social media.

When active (i. e. participatory) observational methods are used, it is necessary to ensure that the posts to the social medium made by the researcher him-/herself or the research institution itself are recognisable as such and that they do not serve to advertise or promote concrete individual products or services, or their manufacturers or providers. This requirement is to be interpreted and applied in the broadest sense, and also holds for public institutions and their activities and services.

6 Copyright, rights of use, exploitation and trademark rights

One of the distinctive features of surveys within or using social media is that in many cases verbatim responses, images and sound recordings that are cited within the report, to illustrate the research results, allow the person who is quoted or recorded to be identified by searching the Internet. One of the duties of the research institution is to determine in advance – in addition to the requirements of data protection legislation – the questions of copyright and laws on the rights of use and exploitation of intellectual property and possibly trademark law in connection with conducting a study and to obtain the necessary consent when using citations (if permissible, see Section 7 Requirement of anonymisation) as well as of video, image or sound recordings.

7 Requirement of anonymisation

The requirement of anonymisation in market and social research also applies, without restriction, to surveys conducted within or using social media. Beyond the requirement of anonymisation, even anonymised verbatim citations of study participants as well as anonymised images, video or sound recordings in the report are never permissible if they expose the person cited, the persons depicted or third parties to the risk of legal or other consequences, or if they violate their personal and other rights (e. g. copyrights, trademark rights, see also Section 6).

8 Consent

The permissibility of processing personal data when conducting studies within or using social media is based – as always in market and social research – on a permissive rule, in particular according to Article 6(1)(1)(f) EU-GDPR (i.e. the legitimate interest, “except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”) or suitable consent given by the data subject in accordance with Article 6(1)(1)(a) EU-GDPR in conjunction with Article 7 EU-GDPR.

In the case of longitudinal studies, it may be necessary to obtain such consent again at regular intervals. These intervals must be individually defined and documented by the research institution carrying out the study.

8.1 In open social media, the personal data of participants may on principle be processed and used for the purpose of market and social research without obtaining the appropriate explicit consent, based on the permissive rules mentioned above. Beyond this, it is also permissible for the researcher to actively guide or generate comments, communication and reactions of participants through his or her own posts, provided this is done in a visible way.

However, studies based on active (i. e. participatory) covert observation procedures in open social media and using open social media are not permissible.

Similarly, it is not permissible to link personal data obtained from open social media with personal data obtained from other sources, unless effective consent has been obtained.

8.2 In closed social media, participants must be able to trust that they are in a protected area that serves a defined purpose which is known to them.

Therefore, the following rules apply here:

- Personal data may not be processed for the purposes of market and social research – or for other scientific purposes – without appropriate consent.
- In addition to the consent of the participants, the appropriate approval of the operator of the social media must also be obtained before processing the personal data of the participants.
- Both must be documented by the research institution conducting the study.
- **Investigations based on covert observation procedures in and using closed social media are not permissible.**
- Personal data from closed social media may only be linked with personal data from other sources if the effective consent of the data subject has been obtained and if doing so cannot lead to the identification of the data subject.

8.3 In social media that are created for research purposes, participants must be able to rely on being in a protected area that is operated by a research institution and serves exclusively market and social research purposes.

Explicit consent to the processing of their personal data for research purposes must be obtained from participants prior to their first participation. Respondents do not indicate in a legally secure way that they agree to their personal data being processed solely for market and social research purposes, simply by joining the social medium.

Under the above-mentioned conditions, studies based on active and/or covert observation procedures in social media are permissible for research purposes.

9 Recruiting survey participants or panel members

In principle, it is permissible to recruit survey participants or panels members in social media, provided the persons contacted are given all the necessary information about the type of survey or the panel, the conditions for participation, the identity of the institution conducting the research and, where required, the necessary data protection information according to Art 12 et seq EU-GDPR. When recruiting surveys participants or panel members in social media, it is necessary to check whether or not the approval of the corresponding operator of the area of the social medium concerned is required.

10 Final provisions and disclaimer

The “Social Media Guideline” forms part of the Code of Conduct that govern market and social research in Germany, resulting as these do from the law and the methodological standards, but also from common practice. It always applies when studies for market and social research are carried out within or using social media in Germany or from Germany.

The principles and practices described in the “Social Media Guideline” represent, inter alia, the result of weighing up the personal rights of the data subjects on the one hand, and the right to conduct research, together with the resulting methodological requirements, as well as the freedom of information on the other. However, the issuers of this guideline cannot guarantee indemnity. If the issues are weighed up at a later time or by other authorities, it cannot be ruled out that different standards may result regarding the permissibility of the practices described.

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