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Position Statement

Slovenian Implementation of the European Electronics Communication Code and impact on insights & analytics sector

About ESOMAR

ESOMAR is the champion of the insights and analytics sector. It is the business community for every professional of the sector. Founded in 1947, the global membership association is a network reaching over 40,000 professionals and 650+ companies in 135+ countries. We support individual and corporate members supplying or using insights by helping them raise ethical standards, connect, and network, and improve its uses and applications by all decision-makers.

Recommendation

We are deeply concerned that the implementation of the law approved by the Slovenian Parliament could, depending on an expansive interpretation by regulators, seriously hinder the ability of the insights and analytics community from delivering essential insights to decision-takers including public authorities who require our sector to conduct research based on representative samples to support evidence-based policy making.

We therefore call for an explicit exemption of telephone-based research activities from the implementing texts and guidelines as they replace to the implementation of the European Electronics Communication Code in Slovenia to safeguard our ability to guide and support decision-makers based on research findings that use the most effective means to achieve representative sampling.

Context

This position statement is issued upon request of our members in Slovenia and constitutes our opinion on the use of random dialled telephone interviews which is commonly acknowledged and used by the worldwide by the insights and analytics sector.

We champion the insights sector.

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Slovenia, together with the other Member States of the European Union are in the process of implementing the European Electronics Communication Code whose primary aim is to further foster the development of a Digital Single Market for the Union and to foster a level playing field amongst market players in the telecommunications sector and guarantee high quality telecommunication services for EU citizens. These laudable objectives are critical to ensure Europe remains competitive in a highly contested digital space.

As the Code must be implemented nationally, there is scope for each Member State to formulate requirements that enable it to further specify based on the national context. The Slovenian Parliament has proposed an implementation protocol which would significantly increase the scope of the law to include efforts to curtail direct marketing activities conducted by telephone. It is important that when doing so, a clear distinction is made between what constitutes direct marketing compared to other activities which do not have the objective to influence or directly sell to an individual and that certain activities such as those conducted by our sector on behalf of key stakeholders including governments and charities who depend on our work to guide policy-making and public service delivery.

The most effective of these methods is the use of random-based digit dialling as it enables the researcher to secure the most representative sample, a requirement most often needed by public authorities themselves who must operate to a much higher degree of representativeness than any other sector.

The case for an explicit exemption covering telephone-based research

ESOMAR calls upon regulators to adopt provisions that exclude telephone-based research from the planned restrictions to be imposed on unsolicited direct marketing communications. This would bring these provisions in line with other key digital markets which aim to achieve the same objectives as the Slovenian Parliament.

As regulators around the world grapple with ensuring the protection of their citizens in the digital economy, unsolicited calls for marketing purposes as become an emerging issue. The need for a differentiated approach that makes a clear distinction between calls for marketing purposes and calls for a research purpose to ensure a random and representative sample has been affirmed in numerous jurisdictions in Europe and North America. Such an approach is currently being considered in current proposals to reform the ePrivacy Regulation where audience measurement research will likely benefit from a specific derogatory regime, as well as the Copyright Directive where text and

data mining exemptions have been foreseen for research purposes, and finally the GDPR where research benefits under Article 89 from the possibilities of a separate regulatory framework that accounts for its societal mission and its specific needs to achieve a verifiable scientific outcome.
In these regulatory jurisdictions, regulators have accepted that random dialled telephone interviews may be a legitimate method used by researchers, recognizing it as being distinct from unsolicited direct marketing, and that is suitable for research approaches alongside other methodologies like, panel research, qualitative and quantitative research based on free-found recruitment, customer satisfaction research, online surveys, web based audience measurement surveys, demographic segmentation based on research surveys etc. as referred to and acknowledged in our General Data Protection Regulation("GDPR") Guidance Note For The Research Sector on Appropriate Use of different legal bases under the GDPR, published in 2017.

Self-regulatory safeguards
Recognising this differentiation, and the need to provide appropriate safeguards, ESOMAR has, to this effect, published an ethics and professional guidance code for its members since 1948, with a joint code being published with the International Chamber of Commerce (ICC) since 1977. The Code is built around three principles: transparency, protection of information collected, and a duty of care to the volunteer respondents. ESOMAR works with a network of national and international associations worldwide to ensure as global a coverage of these principles as possible.

The ICC/ESOMAR Code of Conduct establishes and safeguards an explicit and clear separation between activities conducted for research purposes from those conducted from marketing as an essential component of safeguarding public trust and confidence in our members' research activities.

The Code of Conduct further benefits from an enforcement mechanism enabling any member of the public to submit a complaint against any Code subscriber that operates in opposition to the principles and requirements of the ICC/ESOMAR Code. This mechanism is accessible on our websites and is free of charge to any member of the public that feels the need to avail themselves of it.

Approach safeguarding the rights of individuals contacted
The practice of random dialled telephone interviews itself is privileged by researchers because it does not use pre-existing contact lists and represents one of the most accurate means to achieve representative sampling in our modern societies.

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It is the digital equivalent of writing down random numbers of a piece of paper without knowing anything about who the number is attributed to. These calls are based on randomly generating phone numbers without the insight provider using any information on who the individual might be, and on any personal data thereof.

In the interviewing phase our members comply with the ICC/ESOMAR Code by ensuring that the below stated rules are met:

- the automated randomly dialled phone numbers must be hidden from the interviewers to make sure they do not see the numbers,
- the first introduction is highly important as the interviewer must explain to the answering individual/respondent the purpose of the call and the identity of the research company,
- the interviewer must obtain explicit consent of the answering individual/respondent right after the dialling, without further moving on to the interview and must not collect any personal data (like gender, age, city/municipality, type of the phone number – mobile or land line, privacy, or business related, etc.).
- If the individual refuses, interviewer must correctly record the refusal, including if expressed as "never call me again" to prevent re-use of the phone number so that the number will not be randomly generated again.

These safeguards, which are in place throughout the research process ensure that individuals are made aware that the call is not a direct marketing call and that they are made fully aware of the voluntary nature of their participation and the research purpose of the call.

Conclusion

As demonstrated, regulators throughout the world have accepted that research requires a specific regulatory approach that enables access to representative samples to improve the quality of the research outputs.

Accordingly, ESOMAR calls upon the Slovenian parliament to establish appropriate safeguards and a derogatory framework enabling telephone-based research activities to continue unhindered. These activities, governed by robust self-regulatory and ethical frameworks, do not constitute a nuisance in the same way that an unsolicited direct marketing call may provide but rather are an essential scientific method to ensure decision-takers are aware of societal expectations and can shape policymaking to address them.

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