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## Dutch-Cabinet Telemarketing Ban Proposal to EU Commission

### Policy Position

This paper is submitted on behalf of:

**EFAMRO** the European Federation of Associations of Market Research Organisations. Founded in 1992, EFAMRO represents the interests of market, opinion and social research in Europe. Its members are national trade associations for research businesses in across Europe.<sup>1</sup>

**ESOMAR** the global voice of the data, research, and insights community since 1947, gathers more than 8,000 individual and corporate members in over 130 countries. ESOMAR promotes professional and ethical standards and the value of market, opinion and social research in decision making.<sup>2</sup>

**EFAMRO and ESOMAR** represent the research and insights sector, accounting for a reported annual turnover of €31.1 billion in Europe.<sup>3</sup>

EFAMRO and ESOMAR are joined by Data & Insights Network: TheData & Insights Network (and its legal predecessor MOA) is the branch organisation in the Netherlands for agencies, clients, freelancers, scientists, and professionals who conduct their own statistical research within their organisations and connects everyone professionally involved in human data, insights, and statistical research.

The Data & Insights Network has more than 1300 active members and offers training, advice, and knowledge. It is active in drafting Codes of Conduct on the protection of personal data and other standards, such as the International Organisation for Standardization (ISO). The Data & Insights Network contributes to a strong position of the industry by understanding human behaviour in shaping policy and making decisions to make organisations relevant and meaningful.

### **About Market, Opinion and Social Research**

- 1.1. Market research is comprised of all forms of market, opinion, and social research (“Market Research”).
- 1.2. Market Research is the systematic gathering and interpretation of information about individuals or organisations using the statistical and analytical methods and techniques of the applied social, behavioural and data sciences to gain insight or support decision making.

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<sup>1</sup> EFAMRO, <https://efamro.eu/>

<sup>2</sup> ESOMAR <https://esomar.org/>

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

- 1.3. Market Research stands at the heart of well-informed commercial, social and political decisions. Its purpose is to deliver information and insights about people's behaviour, needs and attitudes to inform decision making by providers of goods and services, governments, individuals, and society at large. Insight into what makes a product, business initiative, consumer or government policy strategy is often the hidden – yet defining – factor between success and failure. It is our sector that provides the deeper intelligence needed for our world today by representing citizens' authentic voices, from all levels of society, in an unbiased and representative way by applying the tenets of statistical and scientific methods.
- 1.4. Market Research associations apply a comprehensive framework for self-regulation to ensure that researchers meet their ethical, professional, and legal responsibilities to the individuals whose data they use in research and to the clients and organisations which commission research. Members subscribe to self-regulation schemes that protect participants' rights.

### **Purpose of our response**

- 2.1. We are deeply concerned about the potential implications of an exemption being sought by the Dutch Government to enable the Netherlands to introduce stricter rules to prohibit telemarketing and door-to-door sales. If not carefully considered, this rule could have severe consequences on the research industry's ability to conduct tele-research and door-to-door research.
- 2.2. Telephone and door-to-door interviewing for research purposes is used extensively in research, particularly for social research, to interview otherwise hard to reach groups and wherever a high-quality random sample is required to ensure research is representative. It is imperative that these modes of communication remain open to research and not conflated or swept up in recommendations meant to address very different types of activities i.e., door-to-door selling and telephone marketing calls.
- 2.3. We also call on the European Commission to uphold the rights preserved in Article 89 and Recital 162 of the GDPR, which exempt scientific, statistical, or historical research from onerous requirements, and which already ensure appropriate safeguards and confidentiality
- 2.4. If this decision is approved by the European Commission, it could, depending on an expansive interpretation by regulators, seriously hinder the ability of the research, insights, and analytics community from delivering essential insights to decision-takers including central and local government authorities who depend upon the research sector to conduct research based on representative samples to support evidence-based policy making.

### **The current Dutch telecommunications restrictions**

- 2.5. At present, the Netherlands already has strict policies in place concerning telemarketing, including an 'opt-in register', which requires a natural person to take active steps in order to be contacted or placed on a call list. The Telecommunications Act also stipulates that telemarketing is only allowed on the basis of (a) explicit consent and (b) an existing customer relationship. Further restrictions also stipulate that a contract is only valid when a consumer has explicitly agreed to take up an offer by sending back a signed contract.
- 2.6. Further blanket-banning or prohibitive policies, without specifically defining or carving out exemptions to research activities, will seriously restrict the capabilities of the research sector to produce critical research, insights and analytics across commercial, social, and political decisions and policy.

### **The differences between research and direct marketing**

- 2.7. It is vital not to conflate Direct Marketing and Research, as they are two distinct business areas, with different legal requirements, objectives and of course, outcomes.
- 2.8. In the context of data protection law and in line with the EU GDPR, Direct Marketing can be defined as personal data processed to communicate a marketing or advertising message. This definition includes messages from commercial organisations, as well as from charities and political organisations. While direct marketing is offered in the General Data Protection Regulation as an example of processing for the legitimate interest of an organization, it also says the data subject shall have the right to object at any time to processing of personal data concerning them for such marketing, which includes profiling to the extent that it is related to such direct marketing.
- 2.9. Direct marketing or electronic marketing is a type of advertising that includes marketing activities conducted by an organisation online, using the internet and online based digital technologies such as computers, and other digital media platforms to promote products and services. Direct Marketing is for the purposes of advertising products to individuals or the promotion of consumer goods, whereas Market Research is a scientific endeavor.
- 2.10. Research is the collection, use, or analysis of information about individuals or organisations intended to establish facts, acquire knowledge, or reach conclusions. It uses techniques of the applied social, behavioural and data sciences, statistical principles, and theory, to generate insights and support decision-making by providers of goods and services, governments, non-profit organisations, and the general public. The purpose of market research is to collect and analyze information, and not directly to create sales nor to influence the opinions of anyone participating in it.

- 2.11. Research associations apply a comprehensive framework for self-regulation to ensure that researchers meet their ethical, professional and legal responsibilities to the individuals whose data they use in research and to the clients and organisations which commission research. Members subscribe to self-regulation schemes that protect respondents' and participants' rights.
- 2.12. We are calling upon the European Commission and the Netherlands Cabinet to establish appropriate safeguards and a framework enabling telephone-based research activities to continue unhindered.

### **The case for an explicit exemption covering telephone-based and door-to-door research**

- 3.1. If the European Commission accepts the Dutch request, EFAMRO & ESOMAR call upon regulators to adopt provisions that exclude telephone-based research from the potential restrictions to be imposed on unsolicited direct marketing communications in the Netherlands. Door-to-door and telephone-based research is used extensively in social research, to interview otherwise hard to reach groups and wherever a high-quality random sample is required. It is imperative that this mode of communication remains open to research and that it is not restricted.
- 3.2. For any exemption, it is vital that there is a clear distinction between contact for marketing purposes (direct marketing) and contact for a research purpose. Article 89 of the GDPR should also be considered and applied appropriately; research which fulfils scientific and statistical research purposes, benefits from the provisions established in Article 89: *where personal data are processed for scientific or historical research purposes or statistical purposes, Union or Member State law may provide for derogations*, which thus include certain market, social and opinion research activities. Research, therefore, which meets the provisions of Article 89 is exempt from onerous requirements or rules which hinder the efficacy of scientific, statistic or historical research.
- 3.3. Regulators acknowledge that telephone and door-to-door interviews for research purposes are a legitimate method used by researchers, recognizing it as being distinct from unsolicited direct marketing, and that is suitable for research approaches alongside other research methodologies.
- 3.4. For example, in Austria, the law provides for the following, concerning direct marketing: <sup>4</sup>'calls for acquisition purposes without the participant's prior consent are not permitted. This ban also applies to calls that serve to establish initial contact with potential customers.' The Austrian authorities interpret this text as: Market Research Calls are permitted without the participant's prior consent, but not for acquisition purposes. The authorities acknowledge the appropriate safeguards ensured in Market Research and distinguish it clearly from direct marketing.

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<sup>4</sup> [https://www.gesetze-im-internet.de/tkg\\_2021/\\_\\_\\_174.html](https://www.gesetze-im-internet.de/tkg_2021/___174.html)

- 3.5. Another key example of this is the Eurobarometer, which is the flagship public opinion survey of the European Commission.<sup>5</sup> It is conducted twice a year and focuses on monitoring key trends relevant to the European Union (as a whole), European Commission priorities as well as contemporary socio-political events. The Eurobarometer allows analysing long-term trends in attitudes related to European affairs. The Eurobarometer provides quality and relevant data for experts in public opinion, researchers, media and the public. The Standard and Special Eurobarometer surveys are generally conducted in a face-to-face interview format in all EU Member States and some additional countries and territories. The Eurobarometer is also conducted via telephone surveys, and this interview method relies on a random selection of respondents who are contacted either by landline or mobile phone and asked to participate in a survey. The Flash Eurobarometer survey which are ad-hoc thematic surveys are carried out within a short timespan on a wide variety of topics and relies heavily on telephone or online interviewing methods. A potential ban to such critical methods for undertaking research, could interrupt the trend data for Eurobarometer which is a valuable resource for the EU and the EP in understanding changes in public opinion and for developing policies across the EU. The ability to be able to read trends in a consistent manner is a critical consideration for research projects run over time.
- 3.6. The methods of telephone research and door-to-door research are essential to providing high-quality research outputs, at an institutional and small/medium enterprise level.
- 3.7. There is also a need to ensure consistency of data collection methodology across the EU; this is critical for pan European research contracts. It is important that data collection methodology changes should be avoided, to ensure congruence for contractual and methodological purposes of research, particularly for research that takes place in multiple jurisdictions.
- 3.8. Finally, telephone and door-to-door research is essential for access to groups who may not be accessing the internet on a frequent basis, even if the internet is available to them. Door-to-door research enables researchers to engage with people who are not empowered to move outside freely and supports the needs of members of the public who may not be digitally literate; have a poor proficiency of the local language; older or disabled, and face-to-face research allows for human engagement.
- 3.9. This represents the importance of representation and inclusivity, allowing for a broad spectrum of society to be engaged in research, meeting their diverse needs and meeting the potential for maximum representation. For example, prohibiting or limiting door-to-door research could have consequences for the representativity of the results of statistical research, especially local statistical research. An example includes the redevelopment of streets or citizens' attitudes towards local

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<sup>5</sup> <https://europa.eu/eurobarometer/about/eurobarometer>

environmental measures, which if limiting door-to-door research can undermine and weaken citizen rights to advocate for the protection of their livelihood.

### Safeguarding the rights of individuals

- 4.1. The use random dialled telephone represents one of the most accurate means to achieve representative sampling in our modern societies. It is the digital equivalent of writing down random numbers on 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.
- 4.2. When collecting data for research purposes including by telephone or via door-to-door interviews, researchers comply with their national ethical research Code, for example the <sup>6</sup>D&IN Code of Conduct and <sup>7</sup>the ICC/ESOMAR Code, by ensuring that the below stated rules are fulfilled:
  - automated randomly dialled phone numbers must be hidden from interviewers to make sure they do not see the numbers;
  - the first introduction is highly important as interviewers must explain to the answering individuals/respondents the purpose of the call and the identity of organisations undertaking research activities;
  - interviewers 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.); and
  - If individuals refuse, interviewers must correctly record the refusals, including if expressed as “never call me again” to prevent re-use of the phone number so that numbers will not be randomly generated again.
- 4.3. Furthermore, as part of the research process, researchers gather information about participant' attitudes and opinions. This information is not assessed in terms of individual answers. As part of the research processing activity, personally identifiable information is removed from the attitudes and opinions gathered as researchers are interested in the aggregate results and trends, not in individual responses.
- 4.4. The principles of confidentiality, anonymity and privacy are deeply ingrained in research practice, mandatory sector Codes and in industry standards such as *ISO 20252: 2019 Market, opinion and social research including insight and data analytics: Vocabulary and service requirements*<sup>8</sup>.

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<sup>6</sup> [https://datainsightsnetwork.nl/wp-content/uploads/2023/09/DIN\\_Gedragcode-2023.pdf](https://datainsightsnetwork.nl/wp-content/uploads/2023/09/DIN_Gedragcode-2023.pdf)

<sup>7</sup> <https://esomar.org/code-and-guidelines/icc-esomar-code>

<sup>8</sup> For more information about ISO 20252: 2019: <https://www.iso.org/standard/73671.html>

- 4.5. These safeguards, which are in place throughout the research process ensure that individuals are made aware that any contact 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 contact.

## Conclusion

- 5.1. 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, EFAMRO and ESOMAR call upon the European Commission to establish appropriate safeguards and a framework enabling door-to-door/in-home research and 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 contact may provide but rather are an essential scientific method to ensure decision-takers are aware of societal expectations and can shape policymaking to effectively address these issues. We also petition the EU Commission to provide recourse and introduce prohibitive measures to limit unsolicited marketing calls from overseas call centres. These types of calls should not be conflated with Market Research, as they violate the eprivacy Directive and GDPR Regulations.

EFAMRO and ESOMAR would welcome the opportunity to discuss further the relevant tele-research exemptions and exclusions for Market Research with the European Commission and Dutch Cabinet.

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