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Guidelines 1/2026 on processing of personal data for scientific research purposes

To whom this may concern.

Thank you for the opportunity to contribute to this public consultation.

As an empirical consumer and user researcher, I have a strong interest in protecting research participants that extends beyond legal compliance. Trust in researchers is essential for participants' willingness to provide candid and reliable responses and, ultimately, for the quality and validity of empirical research. I already consider the Guidelines broadly practical and helpful. The comments below therefore concern only a limited number of points (some of them relatively detailed) that, from my perspective, could make the Guidelines even clearer and more useful in (my own) research practice.

1. Structuring the six key-indicative factors

The six factors identified in Section 2.1 are appropriate and capture the relevant considerations. Although paragraph 12 makes clear that failure to meet all factors is not decisive, their practical application may be difficult because their relevance may vary across disciplines and research contexts. Assessing them individually may therefore create uncertainty as to their relative weight and whether the absence of one factor can be compensated for by others. To provide a more parsimonious and operational framework for self-assessment, I would suggest aggregating the six factors into three overarching criteria, with the existing factors, among others, serving as non-exhaustive indicators of those criteria:

1. **A genuine, ex ante identifiable scientific purpose:**
   The generation of scientific knowledge should be a substantive and identifiable purpose of the processing, evidenced by a documented research question, an intended contribution beyond the individual case, and sufficient autonomy over question, method, and interpretation. Consistent with Recital 159, factors iv and v, this purpose may coexist with commercial interests and need not override them. The criterion serves only to prevent "*science-washing*", where operational data use is relabeled as research.

2. **Epistemic quality of the knowledge-generation process:**
   A systematic, transparent, and discipline-appropriate process, such as documented

design, methodological traceability, openness to critical scrutiny that can cover exploratory, qualitative, and applied research.

3. **Procedural design and governance**
   Protection against misuse and operational repurposing through ethical standards, professional qualifications, independence, review mechanisms, access restrictions, and appropriate technical and organizational safeguards. Formal ethics-committee approval should not be treated as a general requirement, because its availability and relevance are country- and discipline-specific; paragraph 170 itself refers to ethical approval only "when applicable".

Additions:

- Where a processing operation is designed to feed individual-level research data or findings back into operational decisions concerning the same persons, that operational use should be treated as a separate purpose, requiring its own legal basis and not benefiting, for that operation, from the research-specific provisions, even if it forms part of a broader research project. This "no backflow"-criterion should be drawn narrowly, so as not to capture beneficial backflow that the Guidelines already permit, in particular medical findings relevant to a participant's own care (Recital 159; fn. 249 to para. 170).
- Factor iv already recognizes "scientific qualifications (e.g. proven experience or recognition)" alongside a PhD, as well as research conducted "under the supervision of qualified researchers." I recommend making these carve-outs more prominent and de-emphasising the standalone PhD illustration, which risks signaling against legitimate student and non-traditional research (e.g. an undergraduate supervised by a pre-doc research assistant; a professor without a doctorate at an arts school) even though the text does not in fact require a PhD.

2. Anonymity of research data in data-access-panel arrangements

Several examples (e.g., example 5) in the guidelines discuss survey research. However, the Guidelines do not resolve another issue that arises frequently in the social sciences: under what conditions may a research dataset be considered anonymous from the researcher's perspective, and therefore fall outside the scope of the GDPR as regards that researcher, even though a separate intermediary retains information enabling it to identify the participants?

A concrete example along the following lines would provide substantial legal certainty for a widespread research practice[1]:

> *Doctoral researcher D hosts an online questionnaire and engages commercial data-delivery provider P to recruit 1,000 participants in Germany. P sends personalised survey links containing pseudonymous URL parameters to members of its registered panel, may provide them with an incentive, and knows which natural person participated in the survey. However, P does not receive access to the participants' ques-*

[1] This example should also distinguish carefully between the purposes pursued by the different actors. D processes the survey data for a scientific research purpose. By contrast, P's processing should not automatically be regarded as processing for scientific research merely because its recruitment services are used in a research project. Insofar as P maintains a commercial panel, manages member accounts (i.e, routing panelists through clients' – here: D's – questionnaires), distributes incentives or provides participants in return for payment for its own commercial purposes, its processing may pursue those separate purposes rather than a scientific research purpose.

tionnaire responses. D pays P a fee for each completed response. Through the questionnaire software, D receives the responses together with a cryptic participant identifier, but receives no names, contact details or other information directly revealing the participants' identities.

Taking account of *EDPS v SRB* (C-413/23 P), which the Guidelines currently cite only on re-identification for the exercise of rights (fn. 240 to para. 163), the Guidelines should clarify:

- the respective roles of D, P, and, where applicable, the questionnaire-software provider;
- when the data held by D are anonymous *from D's perspective*, and thus fall outside the GDPR; and
- the relevance of persistent identifiers, possible recontact through P (e.g., D asks P to repeat the survey with exactly the same respondents one year later to see how attitudes have changed), technical metadata, and contractual or technical barriers to re-identification to that assessment.

4. Further thoughts and comments

- In many social-science disciplines, low-risk surveys are standard practice. Further examples could clarify that such surveys are not expected to implement the same governance and transparency infrastructure as biobanks, registries or long-term cohorts.
- Further guidance would be beneficial on how to determine whether erasure would render research impossible or seriously impair its objectives. Relevant considerations could include the effect of deletion on the objectivity, reliability, validity, integrity or reproducibility (among other criteria) of the research, as well as the size and nature of the dataset, the stage of the project and the availability of less restrictive alternatives. I am happy to provide specific suggestions in more detail.
- Further guidance is also needed where journals, funders or research institutions require data to be retained or deposited for verification or replication, but the underlying material cannot meaningfully be anonymized, as may be the case with qualitative or ethnographic research. The Guidelines should explain when continued retention, restricted-access repositories or other safeguards may be appropriate, particularly where archiving requirements conflict with data-subject rights.

Thank you for considering these comments. I would be pleased to provide any further information or clarification that may be helpful.

Yours sincerely,

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Note: The views expressed are my own and do not represent the official position of the University of the Bundeswehr Munich.