



## **EU Data Directive: Best Practices for Survey and Opinion Researchers**

The 1998 European Commission's Directive on Data Protection ("Data Directive") prohibits the transfer of "personal data" to non-European Union nations that do not meet the European "adequacy" standard for privacy protection. The EU Data Directive places significant restrictions on the collection, use and disclosure of personal data that would prove taxing for many researchers – particularly the blanket opt-in requirements for respondent participation in research. The United States is *not* considered to have this "adequate" standard.

### **What constitutes "personal data" in the EU Data Directive**

For the purposes of the Directive, "any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity." This definition is deliberately a very broad one. In principle, it covers any information that relates to an identifiable, living individual.

### **Researchers and the Data Directive**

Survey and opinion researchers in the United States who collect or handle personal information from citizens of the EU are subject to the Directive and have three options for compliance: full implementation of the Directive; use model contract language; or adhere to the U.S. Safe Harbor.

Compliance with the Directive or the Safe Harbor may appear simple, but there are consequences for failure. Your adherence constitutes a promise and breaking that promise can be actionable under applicable state and or federal unfair and deceptive trade practice laws. As stated on the "Safe Harbor" website "the FTC has the power to rectify such misrepresentations by seeking administrative orders and civil penalties of up to \$12,000 per day for violations."

*MRA strongly recommends using the model contract language.*

### **The Safe Harbor**

To qualify for the safe harbor administered by the U.S. Department of Commerce, an organization can (1) join a self-regulatory privacy program that adheres to the safe harbor's requirements; or (2) develop its own self-regulatory privacy policy that conforms to the seven safe harbor principles: Notice; Choice; Onward Transfer (to 3<sup>rd</sup> Parties); Access; Security; Data Integrity; and Enforcement.

### **Model Contracts**

Article 26 (4) of the Data Directive allows the EU Commission to issue standard contractual clauses for the purpose of fulfilling the requirements set down by the Directive when transferring data to non-EU countries. These model contracts are available online.

### **More Information**

For more information on laws and best practices impacting research, contact MRA, and consider becoming a [member](#) to get free access to the [MRA Compliance Guide](#).