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THE ROLE OF THE BUSINESS REGISTER IN COORDINATING ACCOUNTING
AND OTHER ADMINISTRATIVE DATA FOR STATISTICAL USERS

THE IMPORTANCE OF A GOOD LEGAL FRAMEWORK FOR THE COORDINATION
FUNCTION OF STATISTICAL BUSINESS REGISTERS

Note by the Secretariat*

The meeting is organised jointly with the Commission of the European Communities (Eurostat) and the Organisation for Economic Co-operation and Development (OECD)

Summary

The Secretariat note was prepared on request by the CES Steering Group on Business Registers for presentation and discussion at the joint UNECE/Eurostat/OECD Meeting in Geneva, 18-19 June 2007. It brings up an issue of a need of sound legal basis for a statistical business register that that would endow with a ground for its proper and efficient functioning without any risk of disclosure for non-statistical purposes.

By presenting a framework for translating statistical requirements into requirements for the legal basis, the note provides the foundation for an in-depth discussion on legal practices regarding statistical business registers and their interaction with administrative data sources in UNECE countries.

* This document has been submitted late in order to include information on the latest progress in this work. The document has been prepared by UNECE secretariat.

I. WHAT ARE THE KEY FUNCTIONS OF A STATISTICAL BUSINESS REGISTER

1. In discussing the issue of an adequate legal basis for a statistical business register in a country, those persons who are in charge of preparing or revising the legal basis (and this should be a combination of statisticians and lawyers) will want to know what are the functions of such a register, and in what aspect these functions are “special” compared to other microdata files kept by statistical offices. Even if it seems to be somewhat redundant for a meeting of specialists in this area, it is important to recapitulate briefly the key functions of a statistical business register beyond the coordination function in the strict sense. They are as follows:

- (a) Serve as address list for economic units to be contacted for business surveys carried out on an exhaustive basis (for the entire universe, i.e. for an economic census; for an exhaustive list of economic units in a specific activity; or for exhaustive strata in a survey that combines sampling with strata with 100% inclusion);
- (b) Serve as sampling frame for random sampling for non-exhaustive business surveys (or the non-exhaustive strata of mixed surveys);
- (c) Allow the grossing up of sample surveys to the target population of economic units;
- (d) Allow the assessment and adjustment of coverage for all administrative data sources structured by individual economic units that are relevant for the production of official statistics;
- (e) Serve as the direct statistical source for structural business statistics at a given moment, especially at a detailed geographical or other detailed level;
- (f) Serve as the direct statistical source for all “demographic” events in the universe during a given period;
- (g) Allow longitudinal analysis of economic units over time;
- (h) Allow the matching of files among different business surveys, and between statistical surveys and administrative sources, at the level of individual economic units, thus being an important instrument of coordination;
- (i) Monitor and manage the response burden caused to individual economic units by business surveys carried out as part of official statistics.

Functions d, h and i are normally associated with the coordination function of a statistical business register, but functions a and b are as important in this respect. Coordination function in this respect means that for functions a and b, the statistical business registers serves as the unique tool in the whole statistical system, and not only for surveys organized by the statistical office or by certain departments of this office.

2. Some additional statistical functions, outside official statistics, are possible, such as providing addresses of economic units to organizations that organize business surveys outside official statistics such as market research. However, this type of use is not legal in all countries, and it will not be considered any further in this paper, which concentrates on the appropriate legal basis for the functions for official statistics as summarized in paragraph 1.

II. SUBSTANTIVE REQUIREMENTS FOR A STATISTICAL BUSINESS REGISTER TO BE ABLE TO BE USED FOR ALL FUNCTIONS

3. Again, for a group of specialists in this area, a short summary of these substantive requirements should be sufficient:

- (a) The coverage of economic units has to be exhaustive, with coverage defined by purely statistical (and cost-effectiveness¹) criteria. As a corollary, the decision on inclusion or exclusion of a unit in the statistical business register has to be made on purely statistical considerations, and should in no way be dependent on decision by an administrative or judicial authority;
- (b) Direct identifiers such as names and addresses have to be permanently associated with the content variables of the register (this is a specific characteristic for registers that are normally not found with other microdata sets used in official statistics);
- (c) A unique identifier for each unit specific to the statistical business register has to be created, which is different from any administratively defined number (but the latter have to be included as additional characteristics in order to facilitate updating from and linkages with administrative sources such as fiscal data);
- (d) The register, both in terms of coverage and the content characteristics, has to be updated regularly at short intervals in order to be as close as possible to the current state of the universe;
- (e) It has to be possible, both legally and in reality, to use all relevant sources for the updating, be they exclusively statistical in nature (business surveys, economic censuses, household surveys, population censuses) or primarily collected for administrative purposes such as taxation, social security, granting licenses etc;
- (f) It has to be possible to follow the same unit over time, which implies that the history of updates or modifications of the characteristics of each unit, as well as their demographic events such as births, deaths, mergers etc., remain documented.

4. The most important consequence is that a statistical business register is, on both conceptual and legal grounds, something very different from an administrative business register,

¹ In some countries, it may be more cost-efficient not to include in a statistical business register economic units that are run by private households, with no employees from outside the household, and to rely on household surveys to cover this group of economic units, especially in agriculture.

although there is a great (but not complete) overlap in coverage. Administrative and statistical business registers may also share some characteristics, but the value for these characteristics are not necessarily identical for all units. The three major differences are:

- (a) Statistical definitions and classifications which may deviate from those used for administrative or legal purposes;
- (b) Updating from all sources in the case of the statistical register, whereas administrative registers can only be updated through the mechanisms and sources defined in the legal basis relevant for this administrative system, but can in no case be extended to include statistical surveys or censuses;
- (c) The statistical register has to be exclusively used for statistical purposes, which makes it impossible to make it available publicly. The use and access of administrative registers are defined in the relevant legal basis, which may provide public access to some or all characteristics. Even when the access to administrative registers is limited, their use as input for updating the statistical registers should not be made impossible through legal provisions that may contradict the provisions of the statistical legislation;
- (d) The access to the single identification number used in the statistical business register has to be limited to the statistical system and for the purposes of official statistics, and should not be forwarded in any circumstance to users outside the system.

5. Considering these requirements together with the fundamental principles of official statistics², which are also applicable to the statistical business registers as one of the major tools for official statistics, there is another important institutional consequence: a statistical office should not be in charge of administrative decision making about individual units like most other parts of administration, and therefore not be in charge of an administrative business register in particular. According to the principle of confidentiality (exclusive statistical use of individual data that are in the system of official statistics; principle 6), data that are collected by producers of official statistics directly from respondents, e.g. in censuses, business and household surveys, are under the pledge of exclusively statistical use, and therefore they cannot be used or forwarded for any administrative purposes related to a natural or legal³ person. Beyond data from statistical surveys, this strict ban extends to any microdata file from whatever origin, even administrative origin, in the possession of the statistical system (see below).

6. If a statistical office as responsible agency for a statistical business register were simultaneously in charge of maintaining an administrative register, where the individual data can be used legally for e.g. tax-related or other decisions about whether certain legal provisions are

² The decision C(47) on the Fundamental Principles of Official Statistics was adopted by the Economic Commission for Europe on 15 April 1992. See <http://www.unece.org/stats/archive/docs.fp.e.htm>

³ Concerning legal persons, this pledge is strictly applicable to legal units of the private sector, and not applicable to legal units of the government sector. Publicly owned economic units that are in competition with private sector economic units, as well as formally private sector economic units that are heavily subsidized, are intermediate cases where the application of statistical confidentiality differs according to national legislation.

applicable to an individual economic unit, this pledge of exclusively statistical use would lose credibility. Therefore, a statistical office should never be in charge of non-statistical tasks that may be perceived, by users or respondents, as being in conflict with the fundamental principles of official statistics, and use or forwarding of data about individual units for administrative purposes is certainly such a case.

7. When the transition process started in Central and Eastern Europe and the CIS countries, many statistical offices were in charge, as a legacy from the past system, of maintaining the major administrative register of businesses, which was used simultaneously for administrative and statistical purposes without any distinction. The process of setting up a statistical business register (and a system of business surveys based on sampling or mixed surveys) that was different from this inherited administrative register was (and in some countries still continues to be) a difficult process, as was the shift of responsibility for this administrative register to a different agency.

III. TRANSLATION OF STATISTICAL REQUIREMENTS INTO REQUIREMENTS FOR THE LEGAL BASIS

8. This part of the paper addresses the issue what would be a “good” legal basis to allow a statistical business registers to be set up and maintained without incurring any legal problems. In other words, this chapter may be considered as a checklist for the legal provisions at national level that regulate a statistical business registers (and possible other statistical registers)

9. The issue of legal basis is not limited to the statistical law and any secondary legislation based on a statistical law. It also addresses issues of the relationship between the statistical law and other legislation, particularly the data protection laws, and some relevant provisions that may be contained therein.

10. Depending on the legal tradition and culture of a country, some of the above requirements may be seen as self-evident and not requiring a translation into explicit legal terms. In other countries, notably in the countries that are still in transition or that have accomplished successfully their transition to a modern statistical system recently, the concept of statistical purposes as defined above does not have a long tradition like in other countries, and is especially new for lawyers. In such circumstances, it may be cautious to be more explicit in the legal basis for official statistics in general, and for the statistical business register in particular, than required by purely legal considerations.

11. Like for other parts of statistical legislation, it is clear that a good legal and institutional basis for official statistics is only a necessary, but not a sufficient condition. However, these necessary elements do not always get sufficient attention from statisticians who are involved in the daily management of statistical business registers.

12. The first issue to check is whether the definition of “statistical use” or “statistical purpose” enshrined in the statistics act is sufficiently broad to enable unit-level data collected through statistical surveys or censuses to be used for updating statistical registers or address lists used for carrying out statistical surveys of official statistics. A definition that limits statistical use

to “the compilation of aggregate information” would in most cases not cover the reuse of identifiers like names, addresses or numbers in the context of statistical registers.

13. The second element that is absolutely fundamental is the access by the statistical office to all kinds of administrative records in the national administration (and other geographical layers where appropriate) for exclusively statistical purposes as defined above. Especially in the context of data about economic units, this legal provision has to enable access to all such records, including tax records; there should not be any provision in other legislation that completely excludes this access for a particular set of data about economic units.⁴ In order to be useful for the statistical business register, access for the statistical office has to include access to identifiers. Provisions that make such access dependent on an explicit provision in a secondary law, and/or on the consent of the data protection agency, may have to be complied with depending on the situation in the country, to make a regular access to the full records possible in reality.

14. We can now approach the issue whether statistical registers, and the statistical business register, should be the object of some specific provisions in the statistical law or not. The answer depends on the more general issue of how explicit the statistical law and/or the data protection laws regulate the use of identifiers and the matching of files from different origins for the purpose of statistics. In order to increase the trust of respondents to provide honest information in statistical surveys, many statistical laws contain provisions that identifiers have to be separated from the content variables as soon as possible in the processing of questionnaires, and even destroyed subsequently. If this is the case in a country, special paragraphs for a statistical business register are legally necessary to allow identifiers being associated to content variables in a permanent way. A similar situation arises when the matching of files from different origin, carried out for purely statistical purposes, requires an authorization from a data protection authority in each particular case; in such a legal environment, a permanent enabling clause for matching in the context of the statistical business register would be necessary in the statistical law.

15. Even if none of this condition is fulfilled, it might be useful to include some specific provisions on the statistical business register in the statistical law itself, rather than only in any secondary or lower-level legislation. The possible reasons are:

- (a) To signal with a higher level of authority and visibility that a statistical business register is something different from the better known administrative registers about certain types of economic units (e.g. legal persons or those subject to VAT taxation);
- (b) To better support the status as the only sample frame for business surveys in the whole statistical system and to discourage attempts by other producers (or by units within the statistical office) to set up parallel sampling frames for parts of the universe;
- (c) To clearly assign this pillar function of the statistical system to the main producer, the national statistical office; and

⁴ Certain data about natural persons in other capacities than economic units may be subject to such exemptions, or access by statisticians may require additional procedural and formal requirements.

- (d) To facilitate the sustained provision of resources for this activity which contributes to statistical output mainly in an indirect way and may therefore not benefit from support from users to the same extent as statistical activities that can be directly associated with outputs.

16. Exclusively statistical use strictly prohibits all use of unit-level data from statistical business registers for non-statistical purposes, without any exception for e.g. courts. It is true that many data in the statistical business registers were collected originally by other government agencies for administrative purposes and subsequently shared with the statistical office for the statistical business register or other statistical purposes. The question arises whether the statistical office should not make accessible such data of administrative origin also for the original administrative purpose and channel back such data to agencies involved in this administrative purpose. From the point of view of a statistical legislation that is supposed to be fully in line with the fundamental principles of official statistics, this question has to be given a clear negative answer: the so-called “one-way” principle, in the sense that administrative data can and should flow to the statistical system, but no confidential data in the opposite direction, has to be upheld also in the context of statistical business registers. The matching process between different sources, as well as the conversion of administrative data to statistical definitions and classifications, will in all likelihood lead to much information about an individual unit that will be modified in comparison to the information obtained from a specific administrative source and is therefore not identical any more. For the same reason, unit-level data taken over from administrative sources that are publicly accessible should not be public as part of the statistical business register, because they may have been modified compared to the public source for statistical considerations.

17. Even if data were identical, authorized third parties, e.g. courts, who can have access to the administrative documents based on other legislation than the statistics act, should obtain this access from the original data owner, i.e. the agency in charge of the primary data collection for administrative purposes, and not from the statistical office or any other statistical department.

18. In the context of the statistical business register, different legal practices exist concerning the use of activity codes of economic units beyond statistical purposes. At first sight, making the activity code of a specific economic unit widely accessible throughout the administration looks like an efficient solution, which would allow the entire administration to benefit from the expertise in coding activities to be found in a statistical office. However, the allocation of a certain unit to a specific activity may have administrative implications on tax rates, or on being subject to a specific law, that causes burden on these units. Any indirect use of data collected through statistical surveys in this context that may be mediated through the statistical business registers should be strictly excluded, and any perception that the statistical office as an institution is involved in allocating activity codes for administrative purposes avoided. On the other hand, the use of the activity classifications developed for statistics beyond the statistical system should be encouraged, since it will indirectly benefit official statistics. The only way to balance these contradictory requirements is to engage expert staff from the statistical office in training staff from other agencies in the correct use of the activity classification.

19. A legal issue that is more linked to data protection legislation than to statistical legislation has to be addressed in this context: the right of natural and legal persons to have

access to files concerning themselves held by public authorities, and to ask for removal or correction if found to be incorrect or unjustified on legal grounds. Most legislation provides for an exception from these rights for files exclusively used for statistical purposes. Some of these exceptions are limited in scope, however, to files that are not organized for retrieval by personal identifier. Statistical registers are clearly organized so as to allow the search of individual units by name or number, so the right of inspection is applicable to statistical and administrative registers alike. The honouring of this right will need some resources in the business register unit of a statistical office, but it is not in contradiction to its statistical functions as long as the economic unit cannot request to be removed from the register or to have a specific characteristic modified against the view of the statistical office. The latter types of decision have to be left to the statistical office, so as to be made on the basis of purely professional considerations.

IV. CONCLUSIONS

20. A statistical business register is a key instrument to business statistics and to economic statistics in general. It is different from both administrative registers, and from other unit-level files that are used in official statistics. This specificity in terms of functions within the statistical system has some implications for the legal basis and may lead to the necessity to include specific provisions in the statistical law (and often in other legislation as well) to lay the ground for a proper and efficient functioning without any risk of disclosure for non-statistical purposes. Improper use of data from a statistical business register may affect the overall credibility of the statistical office as a guardian for the pledge of the exclusively statistical use of confidential information.
