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**LEGAL BASIS OF STATISTICAL CONFIDENTIALITY IN CANDIDATE COUNTRIES**

**Invited paper**

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**Abstract:** All countries planning to join the European Union (candidate countries) have a legal basis including the basic components for production of Official Statistics according to the EU standards. All candidate countries have a legal basis for statistical confidentiality. Statistical confidentiality plays a significant role in the production of Official Statistics in these candidate countries. The Statistical Laws for most of the candidates contain solutions proposed by the recommendations of the Council of Europe (Recommendation No. R (97) 18). Some clarifications and precisions of some specific areas of statistical confidentiality for other candidates are necessary, or would be very useful.

**I. INTRODUCTION**

1. Official statistics provide, on an independent basis, information on economic, demographic, social and environmental conditions. Official statistics in principle observe the mass phenomena in society. The production of this general (aggregated) data is based on large volumes of micro-data on business subjects, physical persons, households etc. The results should not allow to identify the individuals whose data have been used.

2. Statistical confidentiality covers the protection of individual data collected and processed in official statistics for statistical purposes. Statistical confidentiality guarantees that through official statistical data production any individual or personal data received from the reporting units directly or indirectly would not be identified or detected. It also means that the data given by respondents for the production of official statistics must not be used for tax purposes or any other administrative decisions that could affect the concerned units.

3. Statistical confidentiality is a leading principle in official statistics production. Individual data on physical and legal entities, obtained directly or indirectly for statistical purposes (from administrative sources), in principle are protected from use for non-statistical purposes as well as from unauthorized disclosure.

4. In the European Union (EU) protection of personal data and statistical confidentiality are regulated and observed according to the following legal acts:

- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention No.(81)108);
- Recommendation for Processing of Personal Data Conducted and Processed for Statistical Purposes No. R(97)18);

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- Directive 95/46/EC of the European Parliament and the Council of the European Union of the Protection of Individuals regarding the personal data and free movement of such data;
- Act for Community Statistics (EC) No 322 (97) and Council Regulation on the Transmission of data subjects to statistical confidentiality to the Statistical Office of the European Communities (EC) No.1588 (90).

5. At the national level statistical confidentiality is regulated by law. A Pattern for monitoring compliance of national Statistical Law of candidate countries (Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic, Slovenia, Turkey) and other developing countries to EU principles is prepared by EUROSTAT. The statistical confidentiality questions are included in this document.

## **II. EXAMINATION OF LEGAL BASES OF STATISTICAL CONFIDENTIALITY OF THE EU CANDIDATE COUNTRIES**

### **A. Legal basis**

6. Confidential data can be collected and processed for statistical purposes based on law. Generally speaking, the protection of the individual data (collected and processed for statistical purposes) can be regulated by:

- ↳ the general Data Protection Law in the country (in this case it is necessary to make some exceptions to specific principles of data protection in statistics);
- ↳ Complete regulation through national laws for official statistics (Statistical Law);
- ↳ Statistical Law to regulate the basics and to use other laws for specific parts.

7. All candidate countries have a statistical law covering statistical confidentiality. Some regulate the confidentiality question completely by the Statistical Law. Others link particular segments of confidentiality from the Statistical Law with some other laws in the country (Data Protection Law, Criminal Law, etc.).

8. In relation to statistical confidentiality, through the Statistical Law, the candidates basically regulate:

- definitions;
- confidential data collection and processing;
- confidential data use;
- information on statistical results and confidential data;
- access to confidential data (for statistical purposes, scientific research etc.);
- measures of protection;
- liability;
- sanctions, etc.

9. Most of the candidate countries have adopted or made changes in statistical laws during the last two years, such as Bulgaria, Cyprus, Estonia, Hungary, Lithuania, Romania, Slovak Republic and Slovenia. Between 1994-1997, laws were adopted in the Czech Republic, Latvia and Poland and before 1990 in Turkey and Malta. The statistical confidentiality requirements in most of the laws have a high degree of harmonization with the requirements and the documents of the European Union in this area. The European Council Recommendations for protection of personal data, collected and processed for statistical purposes, are accepted.

### **B. Definitions**

10. Definitions are an important part of the Statistical Law. They are very useful for understanding the concepts and providing the relevant protection and identification of the level and the type of the required data confidentiality protection (concerning individual, identification and sensitive data).

11. The respective definitions related to statistical confidentiality (personal data, identification data, processing, communication, for statistical purposes, statistical results, controller) are proposed in the Recommendation No R (97) 18 of the Council of Europe.

12. The Statistical Laws of the candidates provide the definitions for "confidential data", "personal data", "individual data", "identification data" etc. These definitions are given in a separate part of the Statistical Law by some of the candidates and some others in the part of concerned subject matter. Most of the candidate countries consider "confidential" the individual data collected and processed for the production of Official statistics allowing direct or indirect identification of statistical units and disclosed personal data.

13. The individual data obtained from available public sources (directories, lists, catalogues, etc.) are usually not considered confidential. It can be noticed that none of the countries have precisely defined "sensitive data", but refer to the protection of data of a sensitive character (race, nationality etc.) a part of those countries provide an appropriate degree of protection.

### **C. Purpose**

14. The confidential data collected and stored are used in principle only for statistical purposes. An exception to this rule is made regarding scientific research, but only for the confidential data that do not allow a direct identification of a data provider (without identification data). Regarding the confidential data the candidate countries prescribe through the Law that:

- Confidential data can be used for statistical purposes only;
- Individual data cannot be accessed and published in individual form;
- Individual data cannot be used in a context where individual decisions are taken to the concerned units (taxation) or other non-statistical purposes.

15. The candidate countries regularly made the exemption that the individual data can be used for other purposes than statistical, if:

- There is a written consent given by related data units;
- The data is to be used for scientific research (only part of candidates).

16. According to the purpose of using the confidential data, in principle, all the candidates had elaborated the material in detail and in accordance with the Council of Europe and EUROSTAT recommendations. Still some of the candidates give the possibility that individual data collected for statistical purposes can be used for updating administrative registers (business and other) which are in their area of responsibility, but basically this is not recommended.

### **D. Relevance**

17. Only the data, which are necessary to give an appropriate picture of the economic, demographic, social and environmental situation in the country, are to be collected for statistical purposes. The frame of data that is to be collected for production of Official Statistics, for all the candidate countries is established through the National Statistical Programme except for one country where the frame is regulated by Statistical Law. It is also fixed that frames should be based on the principles of relevance. Referring to relativity all the candidate countries have their own particular approach. Some of them have a specific approach to the personal data, which are considered "sensitive" (in principle: nationality, race, health, criminal offence, etc). This data can be collected only on a voluntary basis, which is very positive and reflects of a special care of the statistical confidentiality.

### **E. Information**

18. Individual data on physical persons and socio-economic entities can be collected directly from the respondents (primary collection) or from administrative sources (secondary collection). When statistical data are collected for statistical purposes, the respondent must be able to obtain information about the recording or communication of individual data and their rights. This is important for the protection or

privacy of the individuals, fair collection of data, and as a way of winning the respondents' trust to obtain truthful answers and reliable data.

19. Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovenia have regulations about the respondents' rights in the Statistical Law. In principle, the candidates regulate that the respondents shall be informed of the following elements:

- Legal basis of data collection,
- Obligatory or voluntary basis of data collection,
- Responsible body for data collection and processing,
- Aims of use of required data,
- Data protection,
- Rights of the reporting units.

20. Throughout the Statistical Law the information from respondents is regulated in two ways, as:

- an obligation for the NSO to inform the respondents;
- a Right of the respondents to be informed.

Other countries do not mention informing of the reporting units through the Statistical Law.

21. The countries listed above in para. 19 also have appropriate solutions for ensuring the right of reporting units to be informed. Still, this is a question that refers to some other countries (whether the general law for data protection is used for this purpose).

#### **F. Consent and voluntary data supply**

22. Collection of statistical data on the basis of consent, covers the cases when a reporting unit can decide itself whether or not to provide the requested information. In the cases referring to decisions made by the reporting units, it is very important not to have any pressure (physical or any other) to give information. In the case when a reporting unit decides not to give the information, (if they are collected on the basis of consent), there should be no negative consequences.

23. Concerning the provision and use of individual data which are not collected on an obligatory base, the Law stipulates:

- Collecting and using of individual data on the base of consent,
- Collecting of individual data on voluntary basis.

24. "The consent" in the Law of candidate countries (Bulgaria, Cyprus, Czech Republic, Estonia, Latvia, Malta, Slovak Republic, Slovenia) is connected with the possibility of using the required data for some other purposes (including non-statistical ) or to be published or to give access to third persons.

25. According to the Law, the reporting units should give their consent in written form consisting of the following elements:

- The aims of data use,
- Access to the given individual data,
- Whether the given data of reporting units can be published as separate ones.

26. Some of the candidates have the possibility for withdrawing a given consent at any time and some of them have limits on this issue, in the sense that the consent can be rescinded after finishing some specific processing of the given data.

27. Regarding data collection on a voluntary basis in the candidate countries' Law there are two possible solutions:

- Collection of data on a voluntary basis established in the Law,
- Research and data to be established with the National Programme for Statistical Research.

28. Directly in the Law, the candidate countries define the voluntary basis of the collection of sensitive data (related to the personal data on racial origin, ethnic affiliation, political opinions, religious,

health status, criminal convictions (Bulgaria, Hungary, Poland, Romania). Some of the candidate countries establish voluntary collection of the data connected with statistical research that are not established with the National Programme for Statistical Research. The collection of the Census data is regulated with a different Law for each of the candidate countries.

## **G. Transmission of confidential data**

29. The candidate countries, in principle, have regulations for the transmission of confidential data collected for statistical purposes, that may be transmitted for production of official statistics. In this respect, there are specific possibilities of:

- Access to confidential data between employed persons in the National Statistical Office (allowed to every employee who need data in the fulfilment of their professional tasks);
- Access to individual data from other agencies in the country, authorized to conduct statistical research for statistical purposes only;
- Transmission of confidential data to the European Union for statistical production (in some countries), and
- Access to individual data for the establishment and updating of statistical registers (in some countries).

30. In some countries there is an opportunity given by the Law of:

- Providing individual data for scientific research;
- Access to individual data in other cases.

31. The transmission of confidential data for scientific research is regulated by the Law of the following candidate countries: Cyprus, Czech Republic, Estonia, Lithuania and Slovenia. Transmission of confidential data is allowed under certain circumstances:

- For production of the results in a way that does not allow direct identification of the respondent;
- To supply the Statistical Law's provision of protection of this data.

32. In the Law of one of the above-mentioned countries, it is strictly mentioned that scientific researchers cannot use these data for commercial purposes. The possibility of using individual data for scientific purposes is recommended (through a Pattern) by EUROSTAT because of its rationality with the recommendation not to provide data allowing the possibility of direct identification.

33. In one of the candidate countries the individual data collected for statistical purposes can be used for establishing and upgrading certain administrative registers that are in the responsibility of the Statistical Office. Based on the principles of the Official Statistics, it is not recommended to give access to individual data collected for statistical purposes for administrative registers purposes, as well as maintaining administrative registers by the National Statistical Offices.

## **H. Statistical results**

34. In principle, the statistical results are published or accessed by third parties only in the cases when it is guaranteed that the data provider cannot directly or indirectly identify itself through those results. Regarding the statistical results, all candidate countries have the regulations stipulating that the results shall be prepared in such a manner, so as to render impossible direct or indirect identification of respondents. Some of the countries give the minimum of units for summarizing the results which can be made public (three units minimum, in which the relevant part per unit is not over 75% of the total volume). Individual data can be published or given access by exemption, only if there is a written agreement from the respondent or that the data is public, which in accordance with the Law do not have to be protected.

## **I. Protection of confidential data**

35. The National Statistical Office and other authorized bodies are committed to providing protection of the confidential data through establishing and undertaking appropriate technical and organizational

measures against unauthorized access, giving or processing of data, losing or changing of data, storage of data until their termination, etc.

36. Most of the countries (Bulgaria, Czech Republic, Estonia, Hungary Latvia Lithuania, Malta, Poland, Romania, Slovak Republic and Slovenia), have a regulation in the Law that the National Statistical Office and other bodies that are involved in the production of Official Statistics shall take appropriate technical and organizational measures to ensure the confidentiality of personal and individual data. This regulation is general, because the Law establishes a commitment of the Director of the National Statistical Office to assure technical and organizational measures of protection of confidential data.

#### **J. Liability and sanctions**

37. In the process of production of the official statistic, the persons who are involved in various phases of collecting and processing of data (employees or contractors), have access to classified data. The physical persons assigned to processing the data in the course of a statistical survey have the commitment to protect the confidentiality of the individual and personal data which have become known to them while performing their duties. This is regulated in the Law of Bulgaria, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic, Slovenia and Turkey.

38. The responsibility for protecting the data confidentiality refers to the persons who are employed in the National Statistical Office or in the authorized agencies, as well the contractors who are involved in the processing and/or the collection of the data (interviewers, controllers etc.). This obligation continues after the termination of the employment, or upon the conclusion of any work.

39. The sanctions for the persons who violate the provision of protection of confidential data are also regulated by the Law of candidate countries (Bulgaria, Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic, and Turkey). Some of them connect the sanctions with other Laws in the country. The Laws that define directly the violation of the obligations regarding the protection of the confidential data, prescribe for the violators monetary penalties and in two countries also imprisonment.