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**ENSURING THE PROTECTION OF CONFIDENTIAL STATISTICAL INFORMATION IN  
UKRAINE**

**Contributed paper**

Submitted by the State Statistics Committee of Ukraine

**I. INTRODUCTION**

1. One of the main objectives of the current reform of official statistics in Ukraine is to provide guarantees for the protection of confidential information obtained from statistical inquiries. This objective is being accomplished at three levels: at the legal level and hence also the organizational level (establishing the necessary legal prerequisites to ensure the protection of data and adopting adequate measures to apply the respective legal rules in statistical practice) and at the technical level (introducing special hardware and software complying with standards for information security). The priority task now, therefore, is to create the legal framework for strict observance of the requirements concerning the protection of confidential data.
2. Legislative regulation of matters relating to the confidentiality of statistical information in Ukraine is needed for a number of reasons. Updating the legal framework concerning statistics is, first and foremost, an integral part of the process of adapting national legislation to international legal rules and standards. This process is dictated by Ukraine's gradual integration into the European Community. The granting of the status of fully-fledged member of the Council of Europe to Ukraine in 1995 is a recognition of our country's commitment to the basic provisions of European law and, in particular, to the democratic principles of freedom of speech and information.
3. Since Ukraine became an independent State in 1991, moreover, radical changes have been made in its legislation. Substantial changes have occurred in the national law concerning information. In 1992 Ukraine adopted the Information Act as a basic legal instrument whose application extends to various kinds of information and spheres of information activity, including statistical work. In 1996 Ukraine adopted a Constitution which stipulated that the foundations for the organization of official statistics and for the regulation of demographic and migration processes in the country are to be determined exclusively by the laws of Ukraine. The existing national legislation concerning statistics therefore had to be reconsidered with a view to ensuring its compliance with the constitutional norms, and also with international legal standards. Another extremely important constitutional provision which directly applies to the protection of confidential information concerns the establishment of strict limitations on the possibilities for anyone to obtain personal data about a natural person. Under article 32 of the Constitution, "the collection, storage, use and dissemination of confidential information about a person without his or her consent shall not be permitted, except in cases determined by law, and only in the interests of national security, economic welfare and human rights".
4. The Ukrainian Constitution thus provided the foundations and defined the directions for further improvement and harmonization of national statistical legislation. As a result, in 1997-1998 preparations began on the drafting of a law introducing changes in the Official Statistics Act, an All-Ukrainian Population Census Act, and a law making changes to the Ukrainian Code of Administrative Offences (in particular, to the article of the Code establishing responsibility for breaches of the procedure for the

supply and use of data from official statistical inquiries). The above draft legislation was also based on the Fundamental Principles of Official Statistics adopted by the United Nations Statistical Commission in 1994. In addition, a thorough and comprehensive study was made with a view to the possible application of provisions of the existing statistical laws of many European States, as well as Canada and Australia. The draft legislation was also prepared in the light of the relevant provisions of the model law on statistics drawn up by Eurostat for the newly independent States and Mongolia and approved at a meeting of the coordinating group of the Statistical Office of the European Communities on cooperation in the field of statistics in May 1999. It should be pointed out that in this complex law-making process the national official statistical bodies were given extremely useful assistance by Eurostat and the IMF Statistical Department, and in particular by the IMF's permanent adviser on statistics in Ukraine, Mr. K. Blackburn.

5. The above-mentioned laws have now already been passed by the Supreme Council of Ukraine and in this connection it should be emphasized that the ultimate aim of the national law reform exercise in the statistical field was to establish the legal preconditions for achieving a dual goal: the fullest possible satisfaction of the information needs of the many users of statistical information and strict observance of the confidentiality of data from official statistical inquiries. These are precisely the aspects of official statistical activities which in the previous statistical laws had not, unfortunately, been given due legal attention.

6. The question of the protection of confidential statistical information in fact required greater definition and more precise regulation, and this was done in the preparation of the new version of the law on statistics and the drafting of the law on population censuses. In the previous (1992) version of the Official Statistics Act the term "confidential information" had not been used at all. The Ukrainian Information Act itself was passed after the legislation on statistics, but it was precisely here that a definition of the term "confidential information" was offered. Until then there had been no direct statement concerning the compulsory observance of requirements to protect confidential statistical information in the national statistical legislation. Nevertheless, the article regulating the use of statistical data did say that "information collected about citizens may be used only in anonymous or summary form, and in respect of legal persons only as long as official and commercial secrets are preserved".

7. Consequently, after the adoption of the package of new laws the concept of "confidential information" was introduced into the terminology of Ukraine's statistical legislation. It therefore became an obligation for official statistical bodies and their staff unconditionally to observe the confidentiality of statistical information. A special section of the law introducing changes to the Official Statistics Act included provisions on the guarantees of official statistical bodies concerning observance of the confidentiality of statistical information and defined exceptions therefrom, which do not extend to the prohibition regarding the supply of data. The legislation has now established that primary data obtained by official statistical bodies from respondents during statistical inquiries constitute confidential information which is protected by law, can be used solely for statistical purposes and may be supplied to users only in summary and anonymous form. Any dissemination of data making it possible to derive confidential statistical information about a specific respondent is prohibited. The law has also laid down terms and conditions for user access to statistical information bearing in mind the need to protect such information.

8. In the preparation of the new version of the law on official statistics and especially in the drafting of the law on population censuses, the relevant legislative norms related to the affording of legal guarantees to protect personal statistical information were harmonized with the provisions of the Convention of the Council of Europe for the protection of individuals with regard to automatic processing of personal data (1991) and Directive 95/46/EC of the European Parliament and Council of Europe on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1995). The very fact of the adoption of these laws meets the requirements of the above EU legislation concerning the lawful acquisition and processing of personal data. In this connection it is worth pointing out that until this time Ukraine had no legislative framework for carrying out such a large-scale demo-social inquiry as a population census. This is to be explained by the fact that during the Soviet era there existed a different legal and organizational procedure for carrying out population censuses, i.e. they were conducted in accordance with government policy decisions. Of course, the question of the legal regulation of relations concerning the subjects of a population census and the establishment of official guarantees for the protection of confidential information obtained from such

inquiries was not covered by the relevant normative acts. Therefore, in accordance with the provisions of Directive 95/46/EC of the European Parliament and Council of Europe on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and following the requirements of the Constitution of Ukraine and existing legislation on information, the All-Ukrainian Population Census Act has included provisions which define the purpose, basis and methods of carrying out a population census, the subjects of the inquiry and their rights, obligations and responsibilities, provide a list of the main primary data to be collected during a population census, and regulate matters relating to protection of the personal information obtained and the dissemination of summary and anonymous population census data.

9. This law states that respondents have the right to know what personal data concerning them are collected during the population census, for what purpose they are being collected, and by whom and for what purpose they are used. A respondent can without restriction familiarize himself with the entries in the census questionnaires and any other census documentation containing information concerning him and, if necessary, make the necessary corrections and clarifications thereto. The staff of official statistical bodies and any temporary census personnel employed in the preparation and conduct of a population census and in the processing, collation, dissemination and use of its results are placed under the obligation, while the inquiry proceeds, unconditionally to keep to the list of questions set forth in the population census programme, accurately convey their contents, and precisely and reliably record the information communicated by the respondent and not distort its meaning. All persons handling personal data from a population census must strictly observe the requirement not to communicate to anyone except the respondent the content of the census documentation completed with respect to him. It must be pointed out that all the above provisions of the All-Ukrainian Population Census Act are also set forth in consolidated form in the main piece of statistical legislation - the law on introducing changes to the Official Statistics Act. Clearly, these provisions furthermore apply to all statistical inquiries conducted by the national bodies responsible for official statistics.

10. One particular article of the All-Ukrainian Population Census Act lays down guarantees concerning the protection of personal data obtained from a population census and defines the procedure for keeping or destroying such information:

“Primary (personal) and other data obtained from a population census are confidential information which is protected by law. Records in the census documentation concerning a respondent cannot be disseminated without his consent and may be used only for statistical purposes in summary and anonymous form.

Primary (personal) data for a population census cannot be demanded by a court, procurator's office or any other body for study and use as evidence in civil or criminal proceedings.

Completed questionnaires and other census documentation containing primary (personal) data are to be stored in places not accessible to unauthorized persons for a period of at least two years, and primary (personal) data in electronic form are to be stored for at least ten years. After the said periods of time the census documentation is to be destroyed in accordance with the established procedure.”

11. It should be pointed out that the above rules fully meet the requirements of national and international legislation concerning the protection of personal data and also contribute to greater confidence among respondents in statistical inquiries. This approach, in our view, is fundamental to ensuring the open and constructive cooperation of all subjects during the conduct of official statistical activities. It is no secret that even when the participation of respondents in a statistical inquiry is made compulsory by law, as is participation in a population census, reliable data can be expected only if there is goodwill and a responsible attitude towards it on the part of citizens. This means that respondents have to be sure that the confidentiality of the information supplied by them will be strictly observed. Guarantees of the protection of such data must therefore have not only legal, organizational and technical support, but must also be perceived and accepted psychologically by the public. It is extremely important for respondents to be informed as fully as possible about their rights concerning the protection of data supplied by them and the mechanism for ensuring such protection, as well as about the statutory responsibilities for any breach of the required confidentiality of statistical information.

12. In view of this, one other requirement of Directive 95/46/EC of the European Parliament and Council of Europe on the protection of individuals with regard to the processing of personal data and on

the free movement of such data - a definition in national law of the responsibilities of persons engaged in information activities in the event of inadequate protection of personal data - was taken into account in the preparation of the law making changes to the Ukrainian Code of Administrative Offences. The purpose of changing the rules in the relevant article of the Code was to regulate the question of establishing the administrative responsibility of legal and natural persons for breaches of the procedure concerning the supply and use of statistical data, and in particular confidential information. The new version of the article establishes administrative responsibility for such breaches not only for the staff of official statistical bodies but also for temporary staff engaged in the conduct of statistical inquiries, as well as for respondents and users of the data obtained from these inquiries. The application of the revised rules of the Code in statistical practice is intended, on the one hand, to help improve reporting discipline and enhance the reliability of the data supplied by respondents and, on the other, to ensure strict observance of the requirements concerning the confidentiality of statistical information and on that basis to encourage a positive and trustful attitude on the part of the public towards official statistical activities.

13. No account of the situation regarding the establishment in Ukraine of the legislative preconditions for ensuring the confidentiality of statistical information would be complete without mention of the fact that this work is being carried out within the framework of the general development of national legislation on data protection. At the present time, for example, the issue of the protection of personal information about private individuals is being discussed widely in society in connection with the drafting of a law on a State register of natural persons and a law on the protection of personal data. The aim of the bill on the protection of personal data is to regulate matters connected with ensuring an appropriate level of protection of information about natural persons and it calls for the establishment of general requirements relating to the handling of personal data, a definition of their content and the characteristics of those involved in the performance of such activities, and regulation of the procedure for access to personal data. As regards guarantees of the protection of personal data, the bill calls for the creation in Ukraine of an institution vested with powers for the protection of personal data, or more precisely for the creation of a central executive organ especially authorized to carry out these functions and the introduction of a official regulatory mechanism for the protection of confidential information, which will include: the registration of databases and systems for automated data processing, certification of the technical means of data protection, and facilitation of interaction with the countries parties to the Convention of the Council of Europe for the protection of individuals with regard to automatic processing of personal data, etc.

14. In addition to legal support, ensuring the confidentiality of statistical information involves implementing a range of organizational and technical measures extending from the time of data collection to the point where the data are destroyed. As already indicated above, these are slightly different aspects of the protection of statistical data. In this respect, the official statistical bodies of Ukraine are also making efforts to provide for a sufficient level of information security.

15. It has to be recognized that software and hardware protection of information was not given any particular attention until recently in the official statistical system. This is because of the technology used for statistical data processing, which relied on mainframe computers, local handbooks and non-standard formats for the presentation of data. In that context there was no acute need to use special technologies, software and hardware systems and techniques for data protection since unauthorized use of the statistical information would have been possible only with the assistance of persons engaged in data processing who knew well the structure and formats for their preservation. Thus, information protection essentially comprised organizational measures such as restricting access to statistical information by means of passwords, localizing access to data in special journals, drafting office instructions for persons having the right of access to confidential statistical data, and defining responsibilities for any breach of the rules on access to and use of such information.

16. However, with the changeover to modern information technology (operation of local and global networks, use of statistical databases with a standard structure, introduction of a unified system governing reference information) such means of ensuring the confidentiality of statistical information have proven clearly inadequate. Consequently, the Ukrainian State Statistical Committee's blueprint for the development of its information system has defined a strategy for and mapped out ways of developing the protection of statistical information as a specific and extremely important subsystem.

17. The main directions identified with a view to protecting statistical data are:

- Protection against partial or complete destruction of data, which may be unintentional or deliberate (breakdowns of hardware or software, unqualified actions by service personnel, etc.);
- Protection against the unauthorized use of data (especially personal data and other confidential information, as well as data of commercial value or treated as secret information by law).

18. The strategy for the protection of statistical information is based on the following main principles:

- The software and hardware must not seriously impair the main technical characteristics of the automated system of statistical information processing - reliability, speed of operation and possibility of changing the configuration;
- An integral part of work of information protection is an assessment of the effectiveness of the means of protection, which must use methods taking into account all the technical characteristics of the items to be protected;
- The protection of automated systems must include monitoring of the effectiveness of the means of protection themselves. This monitoring may be done periodically or initiated where necessary by the user or monitoring body;
- Systems for data interpretation or simulation must be transparent for users and in no way impair the basic properties of the set of original data;
- Solutions to ensure effective protection must be comprehensive and provide for both organizational measures and appropriate software and hardware systems.

19. Ukraine's State Statistical Committee has embarked on work to analyse software and hardware systems for protecting statistical information (systems for monitoring access to information, filters for data interchange, coding devices), as well as work on the conceptualization and architecture of information protection systems. Given its lack of practical experience in carrying out such work, the State Statistical Committee would find it extremely useful to learn about the development work and results of the implementation of such data-protection systems (or individual elements thereof) in the statistical agencies of other countries.

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