The new wave of privacy concerns and its impact on official statistics

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Abstract

One of the basic principles of all statistical offices is to guarantee data confidentiality. The first horizontal statistical law in the EU from 1990 was related with the statistical confidentiality, recognised as the main statistical principle in United Nations in 1994 and in the EU in 1997, then, before the existence of the first Data Protection Directive in 1995. The Treaty of Amsterdam "constitutionalized" statistical confidentiality principle in 1999 and it was implemented in Regulation 223/2009 on European Statistics and further elaborated in the European Statistics Code of Practice. In addition, the principle of statistical confidentiality works together with the other statistical principles of impartiality, reliability, objectivity, scientific independence, cost-effectiveness and non-imposition of excessive burdens on economic operators. Therefore, since the very beginning, statisticians have been treating individual data from natural and legal persons with the highest degree of protection in the EU. The question now is, what has changed in the last eight years?

A new wave of privacy concerns arrived as a consequence of the challenges coming from the rapid technological developments and globalisation. This ended in a new regulation in the European Union aimed at harmonising personal data protection rules in the Member States (GDPR). Citizens and governments are nowadays more aware and sensitive on this issue. The European Data Protection Supervisor and national and European lawyers interpret the law and activities in a restrictive way and, at the end, official statistics are made pay for the sins of others.

In this paper we address this issue with the aim to make evident how all GDPR data protection principles are already covered by the EU statistical principles and what could we do to show this reality increasing trust in official statistics. We will also analyse our principles in the light of the use of innovative methods for statistical production, is our code enough?.

Keywords: Statistical law, personal data protection, Code of Practice, institutional environment, legal and privacy issues

1. INTRODUCTION: THE CONCEPT OF STATISTICAL CONFIDENTIALITY

Statistical Confidentiality is the most relevant statistical principle set up in all international statistical codes and national statistical laws. The sixth UN Fundamental Principle of Official Statistics[1] states that *"Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes."* The *Handbook on Management and Organization of National Statistical Systems[2]* explains that "*maintain respondents' trust is the utmost concern*

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[1] Developed and adopted by the Conference of European Statisticians in 1991 and in 1992 at the ministerial level by ECE. In 1994 were adopted as the "United Nations Fundamental Principles of Official Statistics".

[2] https://unstats.un.org/capacity-development/handbook/html/topic.htm#t=Handbook%2FC3%2FUN_Fundamental_Principles_of_Official_Statistics.htm

of official statistics to safeguard the privacy of data providers (…) by assuring that no data, whatever their origin, are disseminated that might be traced back to an identifiable person or business" and the first compliance criteria of this principle is to have clear provisions in the statistical law and national policies to ensure statistical confidentiality.

The European Union (EU) has followed this approach. Article 338 of the Treaty (TFEU) is the legal basis for European Statistics and states in its paragraph 2 that *"The production of Union statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators*". The legal implementation of this article can be found in what we call our EU "statistical law", which is Regulation 223/2009 on European Statistics. Our statistical law not only defines (in article 2) what we understand by statistical confidentiality, but also introduce a whole legal regime of the protection of confidential data under this principle in Chapter V.

Therefore, in the EU, the rules for the protection of confidential data are set up by law for all the members of the European Statistical System (ESS). Regulation 223/2009 understands by statistical confidentiality *"the protection of <u>confidential data</u> related to <u>single statistical units</u> which are obtained <u>directly for statistical purposes or indirectly from administrative or other sources</u> and implying the prohibition of use for <u>non-statistical purposes</u> of the data obtained and of their unlawful disclosure".* Which means that *"The use of confidential data for purposes that are not exclusively statistical, such as administrative, legal or tax purposes, or for the verification against the statistical units should be strictly prohibited." (Recital 27)*

Thus, statistical confidentiality is one of the fundamental principles around which all laws regulating official statistics revolve, obliging statistical agencies to protect individual information from natural and legal persons in order to avoid any unlawful use or disclosure.

2. STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

2.1 Evolution of statistical confidentiality and privacy rules

Initially, the protection of confidentiality was primarily a simple matter of national responsibility that became an international issue in the context of the increasing dissemination of data via the Internet. In particular, in the EU, as a supranational organism, the regulatory framework started in the nineties, just before the establishment of the single market and the single currency. The first general EU statistical act[3] that referred to the transmission of confidential data to the Statistical Office of the Commission, still followed a "national approach" and was limited to non-personal data. This regulation coexisted with the generic statistical law[4] in the

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[3] Council Regulation (Euratom, EEC) No 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities

[4] Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics.

EU, adopted after the entry into force of the Amsterdam Treaty[5], which also foresee common confidentiality rules. In particular, the principle of statistical confidentiality and the statistical confidentiality legal regime of the first Statistical Law didn't varies much as the current one in Regulation 223/2009, although the data sent to Eurostat were aggregated data or confidential data of indirect identification. In addition, this generic legal framework (statistical law) should be put together with the sectorial legislation permitting access to specific individual (and personal) data[6] to the national statistical authorities. *Regulation 223/2009 on European Statistics* updated a little bit the legal regime of the statistical confidentiality, but the main change was article 21 on the transmission of confidential data (including direct identification data) among ESS authorities (Eurostat as well) making it compulsory when statistical sectorial legislation expressly provides for the need for it. The last amendment of Regulation 223/2009 in 2023[7] maintains the status quo on the confidentiality legal regime and even introduce safeguards for the exchange of non-confidential data among ESS authorities and among ESS authorities and ESCB members.

Personal Data protection has also been on an upward trend, the 1995 Directive[8] was the first legal act in the EU on personal data protection. The Directive was derogated by the current GDPR[9] adopted as a response to the security gaps created by the rapid technological developments and the increase of the scale of data sharing and collecting.

We can conclude that the EU statistical confidentiality regime has had a very high degree of protection for decades, even before the adoption of the data protection legal acts.

2.2 New wave of privacy concerns: the privacy of personal data in GDPR and the statistical principles in the statistical laws

Therefore, what are the specific confidentiality rules set up in the statistical law and all other principles governing the elaboration of official statistics in the ESS? And, in addition, what is new under GDPR regarding official statistics? To answer to these questions, instead of introducing an annotated description of these rules, we prefer to explain how the statistical confidentiality works in combination with all statistical principles and in comparison with the

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[5] The Amsterdam Treaty introduced, for the first time, a real legal bases for European Statistics and constitutionalized the statistical principles

[6] i.e, Council Regulation (EEC) No 3711/91 on the organization of an annual labour force sample survey in the Community, foreseen the access to personal data by the national statistical authorities.

[7] That will be published in the EUOJ probably by the end of this year.

[8] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and in 2002 the ePrivacy Directive (2002/58/EC) was adopted (and is being under revision since 2017) aimed at ruling private electronic communication.

[9] Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data (GDPR) in 2016 and Regulation (EU) 2018/1725 on the protection of natural persons with regards the processing of personal data by the Union institutions, bodies, offices and agencies in 2018

principles governing personal data protection under GDPR.

The first element we have to take in mind when analysing GDPR is that when this Regulation refers to statistical purposes it means all statistical uses by private companies or public bodies. However, official statistics are a special subset of these "statistical purposes" and as such, its situation as regards data protection rules should be interpreted along with its particularities.

Table 1 illustrates this comparison between the two legal regimes and how the principles of the GDPR are covered in the statistical legal framework (mainly in the statistical principles contained in the Statistical Law and further developed in the European Statistics Code of Practice (ESCoP).

Table 1: Relation between GDPR principles and statistical principles

GDPR PRINCIPLES (Art. 5.1)	STATISTICAL PRINCIPLES (Stat.Law and ESCoP)
"Lawfulness, fairness and transparency" (*processed lawfully, fairly and in a transparent manner in relation to the data subject)* * Lawfullness: the own GDPR establishes that processing of personal data for official statistics is lawful under article 6.1.e and article 9.1.j (for sensitive data)	(Lawfullness) **Mandate for Data Collection and Access to Data** *(ESCoP-P.2): statistical authorities have a clear legal mandate to collect and access information.* (Fairness and transparency) **Impartiality and Objectivity** (Stat Law-art.2 + ESCoP-P.6): *in an objective, professional and transparent manner in which all users are treated equitably.*
"Purpose limitation" (*legitimate purposes for collection and further uses)* *Although the own GDPR establishes that further processing for statistical purposes is compatible with the initial purpose	**Statistical Confidentiality** (Statistical Law-Chapter V + ESCoP-P.5): *prohibition of use for non-statistical purposes of the data obtained and of their unlawful disclosure.* **Impartiality and Objectivity** (Stat Law-art.2 + ESCoP-P.6) **Mandate for Data Collection and Access to Data** (ESCoP-P.2)
"Data minimisation" (*adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed)*	**Cost effectiveness** (Stat Law-art.2): *the response burden must be minimised.* **Non-excessive Burden on Respondents** (ESCoP-P.9/Ind.9.1): *The range and detail of European Statistics demands is limited to what is absolutely necessary.* **Relevance** (ESCoP-P.11): *European Statistics meet the needs of users.*
"Accuracy" (*accurate and, where necessary, kept up to date)*	**Reliability** (Stat Law-art.2): *measure as faithfully, accurately and consistently as possible the reality*. **Accuracy and Reliability** (ESCoP-P.12): *European Statistics accurately and reliably portray reality.*
"Storage limitation" (*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes*) *Although GDPR permits the storage of personal data for longer periods for statistical	**Statistical disclosure control measures (SDC)** (Stat.Law-Art.20.4): *take all necessary regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential data.*

purposes and with the appropriate technical and organisational measures).	**Statistical Confidentiality** (ESCoP-P.5/Ind.5.5): *regulatory, administrative, technical and organisational measures*
"Integrity and confidentiality" (*appropriate security of the personal data, using appropriate technical or organisational measures*)	**Statistical Confidentiality** (Statistical Law-Chapter V Art.20.4): *regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential data (SDC)*
	(Statistical Law-Chapter V Art.26): *measures to prevent and sanction any violations of statistical confidentiality.*
	(ESCoP-P.5): t*he privacy of data providers, the confidentiality of the information they provide, its use only for statistical purposes and the security of the data are absolutely guaranteed.*
"Accountability" (*responsible for the compliance with the principles*).	**Professional independence** (Stat Law- art.2 and 5a + ESCoP-P.1)
Appropriate safeguards (*Art.89.1: processing for statistical purposes, shall be subject to appropriate safeguards*)	**Statistical confidentiality** (Statistical Law-Chapter V Art.20.4 + ESCoP-P.5)
	Appropriate safeguards (art.20.4) [10]

The conclusion of this comparison is that all principles governing personal data protection in the GDPR are already covered by the statistical principles and have been part of the elaboration of official statistics since the very beginning. Even the principle of storage limitation, which is not applicable to statistical purposes, is normally covered by national statistical legislation, although with an extended time limit. We cannot forget that "statistics" is a share competence among Member States and the EU, so, the EU just rules on what relates to European Statistics harmonizing the minimum, and the national protection is in most cases even stronger. As an example, the Spanish Statistical Law from 1989[11] declares clearly that "*Data which serve for the immediate identification of respondents shall be destroyed when their retention is no longer necessary for the conduct of statistical operations*" (article 18.1) and "*Where the statistical services consider that the retention of any documentation is clearly unnecessary, they may decide to destroy it*" (article 22.3). This kind of rules are usually introduced in the Member States statistical laws as they are part of the "*regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential data*" that they have to take also in accordance with article 20.4 of Regulation 223/2009. The same happens with other rules contained in GDPR as it is shown in Table 2.

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[10] The implementing act mentioned in this article has not been prepared (neither adopted) yet, but there are guidelines and manuals in the ESS on these measures.

[11] Law 12/1989 of the Public Statistical Function

Table 2: Confidential Data treatment (Statistical Law) compared to Personal Data treatment (GDPR)

GDPR PERSONAL DATA TREATMENT	STAT LAW CONFIDENTIAL DATA TREATMENT
Principle of proactive responsibility: *meaning the need of assessing the risk before the treatment (data protection by design) and, take the necessary protection measures including data protection by default (minimisation).*	**GSBPM**[12]: Confidentiality protection is present in the main phases of the statistical process since the beginning (Analysis of the specify needs, design of the statistic, build, collect, process, analyse, disseminate and evaluate). And **ESCoP-P.9**
Information to the Data subject (articles 12-14 GDPR)	**ESCoP-P.6 / Ind.6.6**. Information on data sources, methods and procedures used is publicly available. This is also part of the collection process ruled by national statistical laws[13]. As recognised in the UN Generic Law in Official Statistics[14].
Data subject rights: *The right to be forgotten, the right to object and the right to data portability are not applicable to official statistics. As for the right of access, the right to rectification and the right to restriction of processing might not apply when Union or Member State law provides for derogations from these rights in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes*	This is one of the obstacle official statistics has found in the EU when trying to explain the difficulty of the exercise of this rights with the elaboration process of Official Statistics. Many Member States has solved the issue at national level[15] . However a common treatment along the ESS should be desirable.

The truth is that the relationship between the Statistical Law and GDPR is clear in recitals 162 and 163 of GDPR:

- European statistics are developed, produced and disseminated in accordance with the statistical principles as set out in Article 338(2) TFEU, while national statistics also complies with Member State law. Regulation (EC) No 223/2009 provides further specifications on statistical confidentiality for European statistics.

- Where personal data are processed for statistical purposes, GDPR applies to that processing (and its principles are guaranteed, as we have already demonstrated that,

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[12] The Generic Statistical Business Process Model (GSBPM) describes and defines the set of business processes needed to produce official statistics. https://unece.org/statistics/modernstats/gsbpm. Even if the GSBPM model was developed in 2008, it was based in the good practices of many statistical offices.

[13] i.e. Spanish stat law of 1989, art.11.1: "*When the statistical services request data, they must provide the interested parties with sufficient information on the nature, characteristics and purpose of the statistics, warning them, in addition, of whether or not collaboration is obligatory, of the protection afforded to them by statistical confidentiality, and of the sanctions that, where applicable, they may incur for not collaborating or for providing false, inaccurate, incomplete or untimely data.*"

[14] Article 16 of the UN GLOS recommends to include in the stat laws "*Respondents shall be informed about the purpose and scope of statistical surveys and the measures to ensure confidentiality of data*".

[15] The Spanish Data Protection Law states that "*The NSI and state statistical services may deny requests to exercise the rights of access, rectification, erasure, limitation of processing, data portability, objection and not to be subject to automated individual decisions, including profiling; when the data are covered by the guarantees of statistical confidentiality.*"

apart from a few administrative issues - as having a DPO, or a register of processing activities - and the closest supervision of the data protection authorities, all issues regarding the relation with the data subjects and the protection of personal data are already covered by statistical laws and are part of the statistical process before the data protection laws existed).

- Union or Member State law have to determine statistical content, control of access, specifications for the processing of personal data for statistical purposes and appropriate measures to safeguard the rights and freedoms of the data subject and for ensuring statistical confidentiality (as mentioned, this is already in place for official statistics).

- The statistical purpose implies that the result of processing for statistical purposes is not personal data, but aggregate data, and that this result or the personal data are not used in support of measures or decisions regarding any particular natural person (this is part of the statistical confidentiality protection and also article 19 of the Statistical Law[16]).

We see that the relation among these two legal frameworks is like two different set of rules that intersect when the confidential data from natural persons comes into play, as Figure 1 shows.

Figure 1: Relation Statistical Data/Personal Data
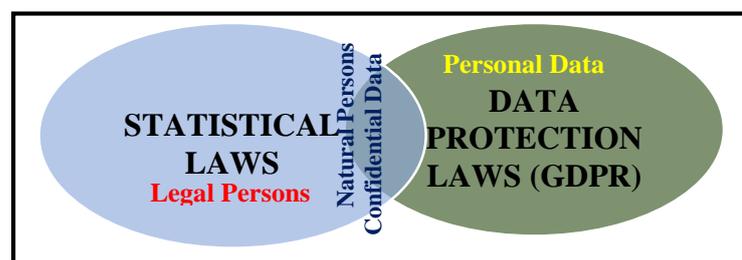
Therefore, if the ESS has already given the highest level of data protection (to natural persons -live and death- and even also to legal persons, since confidentiality rules apply to all confidential statistical data), why the European Data Protection Supervisor (EDPS) is interpreting GDPR for official statistics even more strictly than the legal text?

The EDPS has recommended that all data collected for official statistics should in principle be rendered anonymous[17] in accordance with article 89.1 GDPR. But what this article states is (and for all kind of statistics) that appropriate safeguards shall be in place and that the measures "*may include pseudonymisation provided that those purposes can be fulfilled in that manner*", which does not justify the inclusion in the legal framework for the production of all European Statistics (official statistics) as a general rule the access to anonymous information.

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[16] "Data on individual statistical units may be disseminated in the form of a public use file consisting of anonymised records which have been prepared in such a way that the statistical unit cannot be identified, either directly or indirectly, when account is taken of all relevant means that might reasonably be used by a third party."

[17] Opinion 40/2023 on the Proposal for a Regulation on European statistics

In fact, following this recommendation would render impossible the elaboration of, for example, all social statistics, since all of them imply the processing of identifiable personal data. Then, this is totally disproportionate taking into account the level of protection already guaranteed for official statistics and the data needed to perform its tasks[18]. We consider that this position as regards official statistics could be considered against the Court of Justice case law, recognised in recital 4 of GDPR: "*The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality*".

This restrictive interpretation of the GDPR is jeopardizing the official statistical work, because even if EDPS opinions are not binding, the European Parliament and the society, that are not aware on how statistics work, can be influenced by the EDPS views.

2.3 Privacy and statistical confidentiality in the digital era

The *European Commission's Communication 'A European Strategy for Data',* the *Commission's Communication 'Shaping Europe's Digital Future*' and the *White Paper on Artificial Intelligence* are changing the data governance resulting in new European legal acts with a direct impact on official statistics[19] and in the creation of various European data spaces. The question now is if our statistical principles are solid enough or if these new instruments force us to update them.

To the issue if the Data Governance Act (DGA) has set up new or different principles on the data, the answer is no. The DGA refers to general administrative principles (transparency, equal treatment, non-discrimination and data protection), in particular, all GDPR principles as regards personal data are applied. DGA also refers to the principle governing Open Data in accordance with the PSI Directive (the FAIR data principles, the principle of 'as open as possible, as closed as necessary' - especially for research purposes - and the principle of 'open by design and by default'). Therefore, nothing new under the sun in this regard.

As regards the Data Act, the principles mentioned are again the GDPR principles, in particular, data minimisation and transparency. It also mentions the principles of confidentiality and of professional and commercial secrecy, "the once-only principle"[20] and the compensation principle. To cover the content of these principles we have the statistical principles set up in the law and the ESCoP, as mentioned. However, we questioned the nature of the "compensation" or its opposite, "the free of charge", as a principle. The decision to compensate

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[18] Similarly, in Opinion 2/2017 the EDPS recommended, for all social surveys, to request data on the basis on consent even if GDPR permits the access without consent.

[19] Data Governance Act, Data Act, Artificial Intelligence Regulation, Interoperability Regulation

[20] Which prevents the same data from being requested more than once by more than one public sector body

or not for accessing the data cannot be at the same level as confidentiality principle, for example. To use one or the other is more a political decision that the decision-makers might follow taking into account a number of different elements. The amendment of the statistical law have chosen to respect the same access for statistical purposes to all data (Big/Smart or not), so, free of charge, without prejudice of the option of each NSI to provide compensation to the private data holder (PDH) limited to the processing service according to the specifications requested. So, this legislator's choice is not the same as the choice made in the Data Act for all kind of access (this different treatment could not be done if we consider it as a principle).

As regards the Artificial Intelligence Act, it refers to the 2019 "*Ethics guidelines for trustworthy AI"* developed by the independent AI HLEG appointed by the Commission[21]. Looking into these principles is easy to see that they are also already covered (at least from the theoretical point of view) by the statistical principles.

This is why the amendment of Regulation 223/2009 of 2024 is not introducing new principles for ruling the access to PHD or for using new data sources and new technologies. As we have argued before "*we have 7 main statistical principles recognised in Primary Law, in the Treaty, and defined in secondary law (Regulation 223/2009). These principles are compulsory and immovable, but the definition can be updated if needed. However, the ESCoP[22] is more our ethical code that should be flexible in order to cover all ethical issues.*"[23].

However, even if the principles mentioned in the data acts are already covered by the statistical principles, there are specific issues related just to the use of new data sources and new technologies that we should introduce as new indicators in our ESCoP.

Nevertheless, what Regulation 223/2009 has implemented is a whole regime of access to PHD (Big/Smart Data), where the statistical principles are combined with GDPR principles and other "data principles" in the legal form of "conditions or requirements" (Cost-effectiveness and non-excessive burden, minimisation/proportionality, purpose limitation, protection of trade secrets, appropriate safeguards, pseudonymisation[24] and administrative and procedural principles - equal treatment, non-discrimination, right to be heard, and transparency).

We see that, regarding the use of new data sources and new technologies, the figure of intersecting circles becomes much more complicated:

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[21] Recital 26 says that „In those guidelines, the AI HLEG developed seven non-binding ethical principles for AI which are intended to help ensure that AI is trustworthy and ethically sound. The seven principles include human agency and oversight; technical robustness and safety; privacy and data governance; transparency; diversity, non-discrimination and fairness; societal and environmental well-being and accountability".

[22] European Statistical Code of Practice

[23] Gómez, Canovas, Saura (2023)

[24] This was introduced in the negotiations with the EP because it is very much influenced by EDPS views, and so the Commission.

Figure 2: Relation Statistical Laws/Personal Data Protection Laws/Data Acts
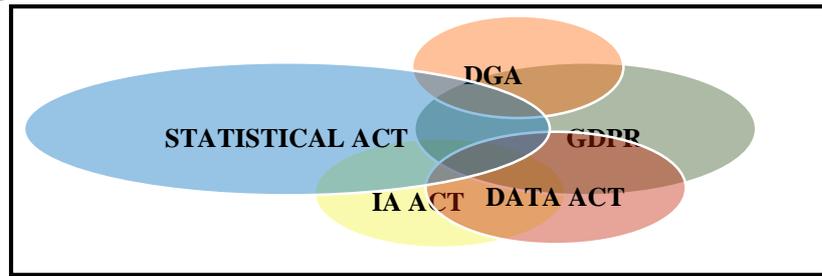
3. WHAT IS NEXT?

The amendment of Regulation 223/2009 that will be published in 2024 is trying to clarify the relationship, first between the two legal frameworks (statistical laws and Data protection laws) and, second, between statistical laws and "data" laws.

Regarding Data Protection laws, recitals 21 and 22 of new Regulation 223/2009 explain that official statistics are not just any statistics but are a matter of public interest and that they have the highest degree of protection of data processing in the EU. In particular, the said recitals declares that

- Processing of personal data for the purposes of official statistics by NSIs and other national authorities, are considered to be in the public interest.

- Further processing of personal data for statistical purposes is compatible with the initial purposes for which they were collected.

- <u>Personal data processed for statistical purposes</u> in the public interest <u>are confidential data</u> and thus <u>are subject to the statistical confidentiality principle</u>, (so, should only be used for statistical purposes and never for supporting measures or decisions regarding any particular natural person).

- All activities carried out under the statistical framework for official statistical purposes involving the processing of personal data comply with the EU data protection acts and are subject to appropriate safeguards for the rights and freedoms of the data subject to ensure that technical and organisational measures are in place.

- The particular safeguards include technical and organisational measures such as privacy-enhancing technologies (that should be used to share data) and the respect of the principles of purpose limitation, data minimisation, storage limitation and integrity and confidentiality as set out in GDPR and Regulation (EU) 2018/1725 and further elaborated in the ESCoP. Those measures might include pseudonymisation

- Pursuant to Article 89(2) <u>derogations should be granted by national legislation to the development, production and dissemination of European statistics by NSIs and other national authorities</u>, under the safeguards laid down therein.

As regards Data Acts, as we have detailed in the previous section, Regulation 223/2009 recognises as a pre-condition to the access to PHD the need to respect the statistical principles and data minimisation, proportionality, purpose limitation, protection of trade secrets, appropriate safeguards and other administrative and procedural principles. These rules are also adapted to the statistical needs. However, Big/Smart Data shall be non-personal data except and only in specific circumstances, when personal data from personal data categories are specified in sectorial legislation. Here, the interpretation is open to the ESS, does it mean new legislation? If the sectorial legislation already refers to the need to collect (access) personal data, it is understood as all kind of personal data, whether or not they are Big/Smart? Whatever we decide, it would be recommendable to mention explicitly in the European and national statistical programmes that the information required includes these specific categories of confidential data.

As we have explained, the ESS invests lot of efforts in implementing tools and guidelines to harmonise and maintain the same level of protection of confidential data (including personal data) in the EU[25]. However, the society is neither aware of these efforts nor of the specific protection measures we have in place. This is mostly our fault. In 2015, just a year before the adoption of GDPR the Working Group of Statistical Confidentiality (previous Committee on Statistical Confidentiality) was eliminated and its tasks spread among the Methodology WG and the DIME (Methodology Directors Group). Even if two technical supporting groups were maintained[26] the important legal and strategic issues on privacy and confidentiality were lost among all other methodological issues covered by these groups. This could also be one of the reasons why we have not implemented yet article 20.4 of Regulation 223/2009 adopting an implementing act including measures to ensure the harmonisation of principles and guidelines as regards the physical and logical protection of confidential data.

In fact, we consider that implementing this article would be one of the best measures to communicate to the society how strong we protect confidential (and personal) data. Article 20.4 states that the Commission shall adopt implementing acts aligning in the ESS the regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential data (SDC). The amended Regulation 223/2009 in 2023 also includes a mandate to the Commission to adopt implementing acts setting out the technical aspects of non-confidential data sharing between the statistical authorities in the ESS.

Therefore, the ESS should implement the statistical law with, at least, the minimum harmonised SDC measures that could be further elaborated by soft law (manuals, guidelines…) applying

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[25] For more information on the technical work visit the statistical confidentiality groups' page (https://circabc.europa.eu/ui/group/06e7ff3c-9783-47eb-994e-8d05aa96883c), mostly publicly available.

[26] Expert Group on Statistical Disclosure Control and Microdata Access Network Group (MANG)

to specific type of data or tools[27]. In addition, a new revision of the ESCoP should take place in order to reflect clearer the good practices for the access to Big/Smart Data and the use of new technologies.

These legal and regulatory measures should be accompanied by communication actions, starting, for example, with a workshop/conference mixing together statistical authorities and data protection authorities, followed by other events inviting also data officers. The results of these workshop could even be the publication of Guidelines on statistical confidentiality (and privacy) methods "signed" or "branded" by the data protection authorities.

These are just some ideas on how to revert the current tendency of data protection authorities (and citizens) to interpret the law in an extremely restrictive manner for official statistics. But, of course, there could be other that might help to achieve this goal[28]. Anyway, the first step is to be aware in the ESS that this is a serious problem that we need to solve and then prepare and adopt a strategy to solve it.

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[27] To prepare this legal acts and the confidentiality strategy and due to the increase importance of the confidentiality and privacy issues, the WG on Statistical Confidentiality should be reactivated.

[28] Apart of the need of having the mentioned implementing act that, from our point of view, is a "must"

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[1] Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics.

[2] Council Regulation (Euratom, EEC) No 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities

[3] Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast)

[4] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

[5] Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information.

[6] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

[7] EDPS Opinion 2/2017 EDPS Opinion on the proposed common framework for European statistics relating to persons and households.

[8] EDPS Opinion 40/2023 on the Proposal for a Regulation on European statistics.

[9] Ethics Guidelines fFor Trustworthy AiI, High-Level Expert Group on Artificial Intelligence, 8 April 2019. *https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60419*

[10] European Commission of the Communication 'A European Data Strategy' (COM/2020/66 final)

[11] European Commission's Communication 'Shaping Europe's Digital Future' (COM/2020/67 final)

[12] European Commission's White Paper on Artificial Intelligence (COM/2020/65 final)

[13] European Parliament legislative resolution of 13 March 2024 on the proposal for a regulation of the European Parliament and of the Council on laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union Legislative Acts (COM(2021)0206 – C9-0146/2021 – 2021/0106(COD)

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