



EUROPEAN CONFERENCE ON QUALITY IN OFFICIAL STATISTICS 2024 ESTORIL - PORTUGAL



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

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THE CONCEPT OF STATISTICAL CONFIDENTIALITY

Ethical duty

- Sixth UN Fundamental Principle of Official Statistics
- **Article 338 TFEU: Fundamental statistical principle**
 - Regulation 223/2009 on European Statistics (art.2)

*“the **protection of confidential data related to single statistical units** which are obtained directly for statistical purposes or indirectly from administrative or other sources and implying the prohibition of use for non-statistical purposes of the data obtained and of their unlawful disclosure”.*

*“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.**”*

- European Statistics Code of Practice





STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

Evolution of statistical confidentiality and privacy rules

1990: First EU horizontal statistical act

- 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

1993: FIRST STATISTICAL FRAMEWORK ACT

- Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics

2009: Second statistical framework act

- Regulation 223/2009 on European Statistics

2023: Amendment statistical act

1995: First EU Privacy Directive

- 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

2002: ePrivacy Directive

2016: GDPR

- 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



STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

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

What is new?

Relation between GDPR principles (art.5.1) and statistical principles (Stat, Law & ESCoP)

Lawfulness, fairness & transparency

Processed lawfully, fairly and in a transparent manner in relation to the data subject

Processing of personal data for official statistics is lawful under article 6.1.e and article 9.1

(Lawfulness) 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 (Stat. 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)

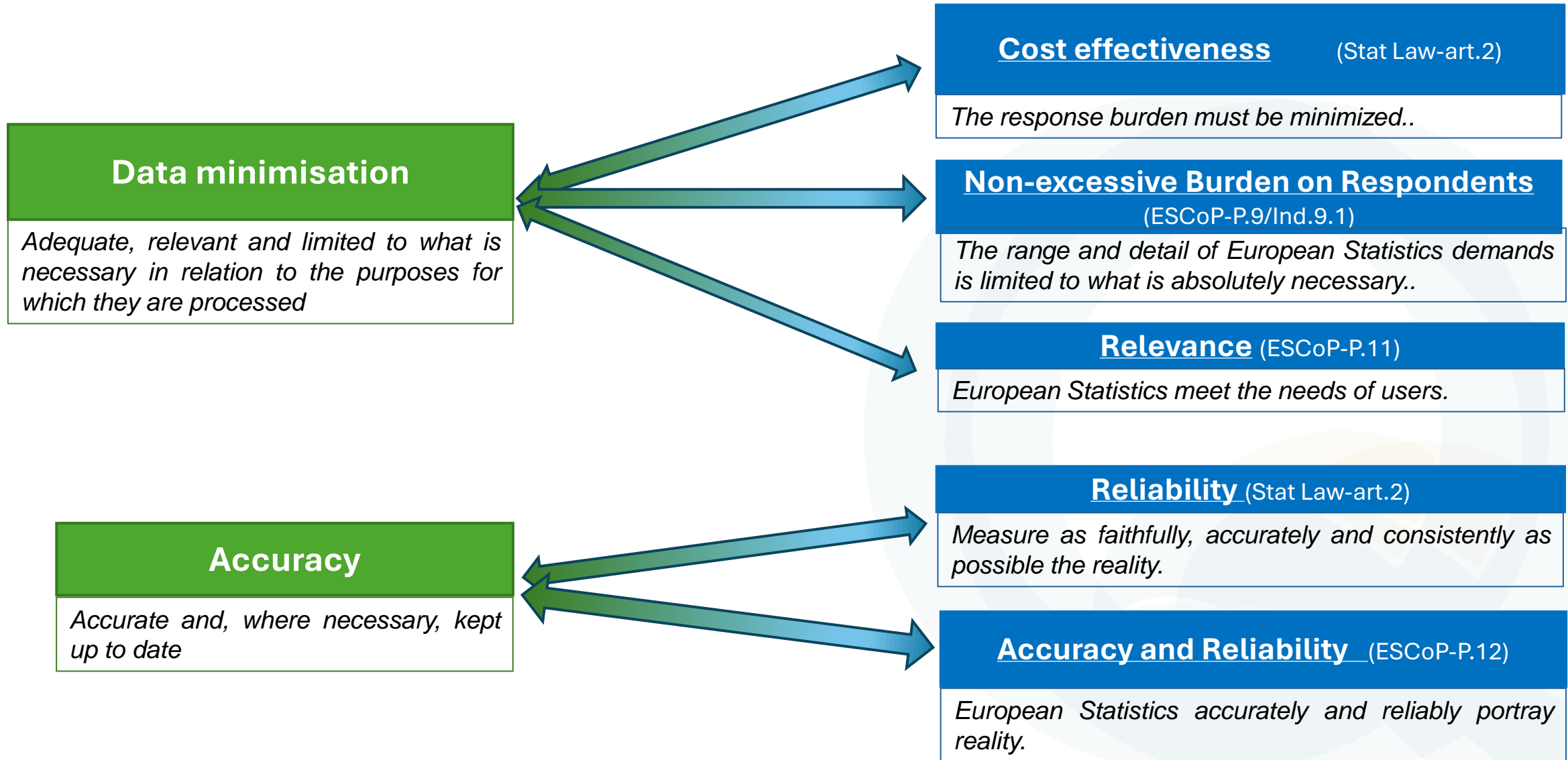
Mandate for Data Collection and Access to Data (ESCoP-P.2)





STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

Relation between GDPR principles (art.5.1) and statistical principles (Stat Law & ESCoP)





STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

Relation between GDPR principles (art.5.1) and statistical principles (Stat Law & ESCoP)

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 purposes and with the appropriate technical and organisational measures*

Integrity and confidentiality

Appropriate security of the personal data, using appropriate technical or organisational measures

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..

Statistical Confidentiality (ESCoP-P.5/Ind.5.5)

Regulatory, administrative, technical and organisational measures.

Statistical Confidentiality (Stat.Law-Chapter V: Art.20.4 & Art.26)

Regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential data (SDC) + measures to prevent and sanction any violations of statistical confidentiality.

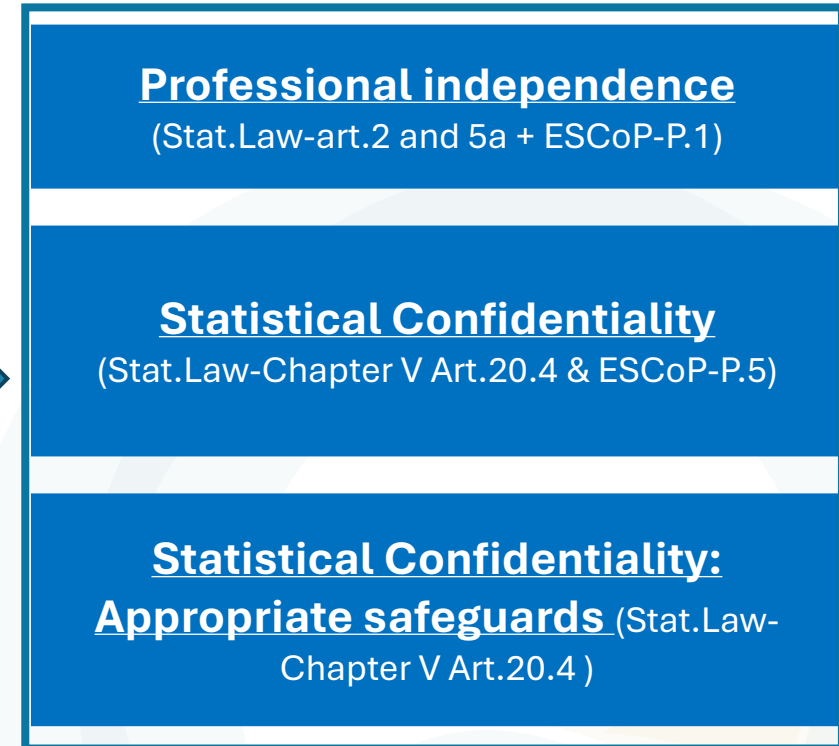
Statistical Confidentiality (ESCoP-P.5)

Absolutely guarantee on the privacy of data providers, the confidentiality of their information, its use only for statistical purposes and the security of the data are.



STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

Relation between GDPR principles (art.5.1) and statistical principles (Stat Law & ESCoP)



CONCLUSIÓN

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.



STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

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

GDPR PERSONAL DATA TREATMENT	STAT LAW CONFIDENTIAL DATA TREATMENT
<p>Principle of proactive responsibility: <i>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).</i></p>	<p>GSBPM¹²: 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</p>
<p>Information to the Data subject (articles 12-14 GDPR)</p>	<p>ESCoP-P.6 / Ind.6.6. Information on data sources, methods and procedures used is publicly available.</p> <p>This is also part of the collection process ruled by national statistical laws¹³. As recognised in the UN Generic Law in Official Statistics¹⁴.</p>
<p>Data subject rights: <i>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</i></p>	<p>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 level¹⁵.</p> <p>However a common treatment along the ESS should be desirable.</p>



STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

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

- European statistics => in accordance with the statistical principles as set out in **Article 338(2) TFEU** and Regulation (EC) No 223/2009 (further specifications on **statistical confidentiality** for European statistics).
- National statistics also complies with Member State law.
- Where personal data are processed for statistical purposes, GDPR applies to that processing (*already covered by statistical laws and the statistical process*).
- 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 safeguard measures for ensuring statistical confidentiality (*already in place for official statistics*)
- 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*)



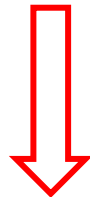
STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

Official statistics = Highest protection of confidential data

Why the European Data Protection Supervisor (EDPS) is interpreting GDPR for official statistics even more strictly than the legal text?

EDPS Restrictive interpretation

- **All data** collected for official statistics should in principle be rendered **anonymous** in accordance with article 89.1 GDPR.
- Request data for social surveys on the **basis on consent**.



Jeopardize the official statistical work

GDPR

Article 89.1: appropriate safeguards and measures that “**may include pseudonymisation** provided that those purposes can be fulfilled in that manner”

Recital 4: “*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**”.*





STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

Privacy and statistical confidentiality in the digital era

DGA

GDPR principles (personal data)

Principles governing Open Data (PSI Dve)

(FAIR, as open as possible, as closed as necessary, open by design and by default)

DA

GDPR principles (personal data)
**confidentiality and of professional and
commercial secrecy
once-only principle**

~~competition principle~~



AIA

2019 “Ethics guidelines for trustworthy AI”

Amended Regulation 223/2009

**No new principles for PHD Access (Just
conditions)**

STATISTICAL PRINCIPLES



STATISTICAL CONFIDENTIALITY AND PRIVACY RULES

Privacy and statistical confidentiality in the digital era

Figure 1: Relation Statistical Data/Personal Data

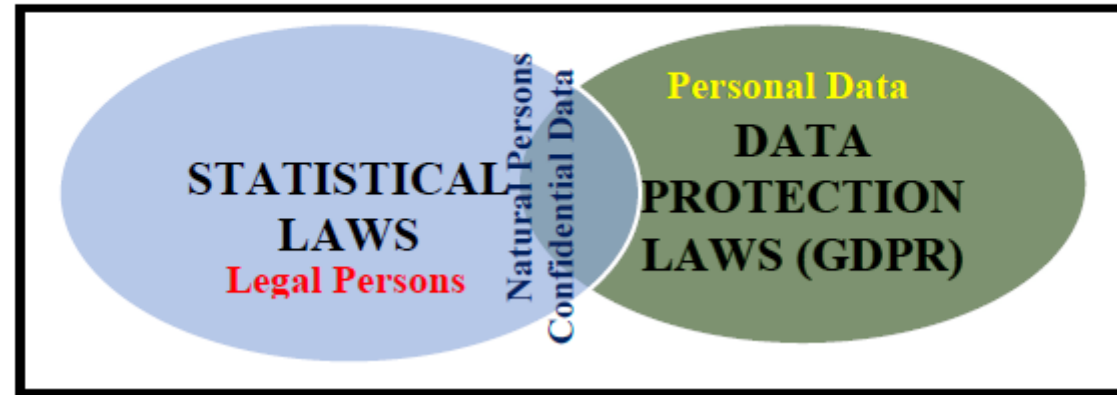
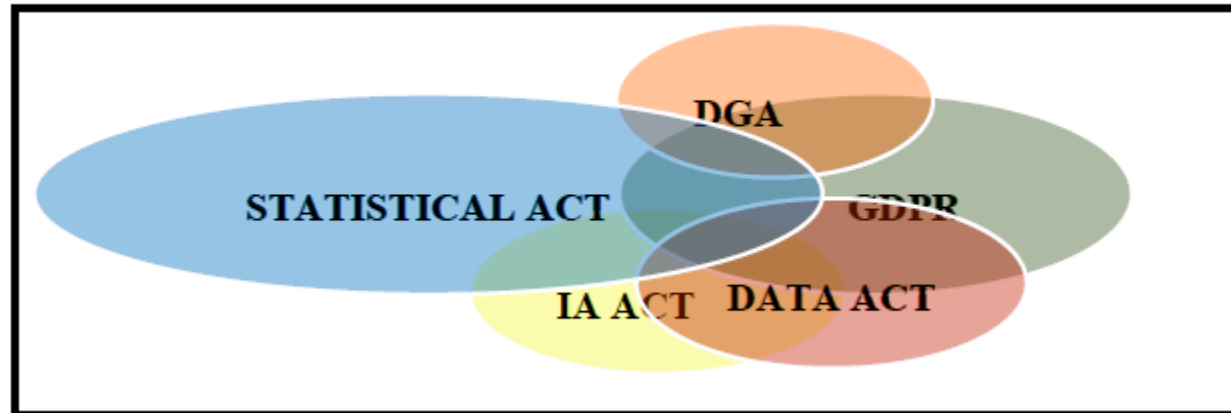


Figure 2: Relation Statistical Laws/Personal Data Protection Laws/Data Acts





WHAT IS NEXT?

Amended Regulation 223/2009

Processing of personal data for official statistics purposes

- Public interest.
- Further processing of is compatible.
- Personal Data are confidential data subject to **statistical confidentiality**.
- All European Statistics comply with GDPR and are subject to appropriate safeguards.
- The particular safeguards include technical and organisational measures (that might include pseudonymisation) as PETs, principles of purpose limitation, data minimisation, storage limitation and integrity and confidentiality as GDPR and further elaborated in the ESCoP
- Derogations should be granted by national legislation to the development, production and dissemination of European statistics.

Access to PHD

- Respect the statistical principles
 - Data minimisation, proportionality, purpose limitation,
 - Appropriate safeguards
- Protection of trade secrets
- Administrative and procedural principles
- Non-personal data (*except personal data categories specified in sectorial legislation*)



WHAT IS NEXT?

Learning to explain & gaining trust

ESS CONFIDENTIALITY STRATEGY

WG on Statistical Confidentiality

IMPLEMENTING ACT

Harmonization of principles and guidelines as regards the physical and logical protection of confidential data

(art. 20,4 Reg.223/2009)

ESCoP revision

To reflect clearer the good practices for the access to Big/Smart Data and the use of new technologies.

COMMUNICATION

Join Workshops
ESS+Data
Protection
authorities



HIGH QUALITY

Public Guidelines on
statistical
confidentiality





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