

THE PRINCIPLE OF MINIMIZATION OF PERSONAL DATA UNDER THE GDPR IN OFFICIAL STATISTICS IN THE EUROPEAN UNION

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Abstract

This paper examines the interplay between official statistical production in the European Union and the General Data Protection Regulation (GDPR), aiming to pinpoint particular effects of the GDPR on official statistics. It discusses the legal premise of conformity with GDPR provisions and identifies the legal basis for processing personal data for official statistical purposes, emphasizing the particular conditions set forth by the data minimization principle and its implementation in statistical production. The paper goes further into the concept of data minimization and its specific requirements, examining statistical use of data. It analyzes how this principle guides the collection and processing of personal data, ensuring that only data essential for the specific statistical purposes is processed and that such processing does not excessively infringe upon the data subject's rights and freedoms. The paper concludes that adherence to data minimization does not imply the use of non-personal or anonymized data, but rather the use of personal data to the extent necessary for the data controller to fulfill their legal purposes in a lawful manner, asserting the notion that the way for that to happen is for official statistics producers to use the data emerging from the particular methodological descriptions of each statistical product.

Keywords: data minimization, official statistics, personal data

1. Introduction

The General Data Protection Regulation (GDPR) [1], introduced into the European legal landscape on May 25, 2018, is Europe's comprehensive approach to data protection. Its aim is to give people in the European Union control over their personal data that are being used by others in activities that are not of a purely personal or household nature and to create a European common area for the data to flow freely. The risk-centric approach of the GDPR leads to the imposition of strict rules and structured procedures on those processing this data anywhere in the world. The GDPR impacts virtually all societal, economical and political sectors that involve personal information processing, and thus the production of official statistics in various ways.

The point of this paper is to show particularly how a predominant principle of the GDPR, the principle of data minimization, impacts the production of official statistics. In order to do that: (A) we will present the theoretical framework of the GDPR minimization principle and the possible impact of these minimization obligations to official statistical production, (B) we will present a case study of such process, (C) we will produce the results and (D) we will show the conclusions.

2. Data minimization in official statistical production

The principle of data minimization is the third of the seven main GDPR principles. This principle is found in article 5 par. 1c of the GDPR and it dictates that personal data collected should be adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed. The data minimization principle is tied to the legal basis of processing data - the lawfulness principle - and the specific purpose of processing - the purpose limitation principle -, in the sense that it complements them and defines their limits. These principles are presented below.

2.1 The legal basis of processing in official statistical production and the purpose limitation for the processing of personal data.

Lawful processing of personal data under the GDPR can take place under specific conditions. Articles 5 and 6 of the GDPR set out these conditions, describing the principles and the legal bases for such processing.

There are six primary legal bases defined in par. 1 of article 6 and the additional basis of further compatible processing, as defined in par. 4 of article 6 of the GDPR. Use of personal data for official statistics predominantly falls under the legal bases of processing necessary for compliance with a legal obligation of the controller, (i.e. in this case the NSI or another official statistics producer), which is described in article 6 par 1c of the GDPR, or processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, which is described in article 6 par 1e of the GDPR.

The GDPR also defines (article 5 par 1 b and recital 50) that the use for statistical production of personal data that were initially collected for other purposes, which is called further processing and it is generally prohibited under the principle of purpose limitation, is a use for a purpose other than the original, which is compatible with the original, thus is a permitted use as further compatible processing. This processing then, which is the case for all data that we in official statistics acquire for example from administrative or private sources, i.e., from any source other than the respondents themselves, is considered compatible with the initial purpose of collection and under GDPR provisions does not require a legal base separate from the original in any case.

2.2 The processing of personal data for statistical purposes in particular

Further specific provisions are in place within the GDPR regarding statistical production. Article 89 of the GPDR states that processing for statistical processes must be subject to appropriate safeguards, to ensure in particular the principle of data minimisation. This can be achieved through pseudonymisation or anonymization, provided that it allows for the purpose of statistical process to be achieved.

Accompanying recitals 156, 162 and 163 of the GDPR provide clarification regarding data processing for statistical purposes and for the production of official statistics in the Union, referring to Regulation 223/2009 [2] and indicating the relevance of the statistical principles and the principle of statistical confidentiality in particular. It is stated that measures should be taken aiming to minimize the processing of data according to the proportionality and necessity principles and also that statistical confidentiality according to Regulation 223/2009 is to be observed and that the data used in such statistical processes is not to be used in support of measures or decisions regarding any particular person.

2.3 The principle of data minimization in particular

The principle as articulated in the GDPR dictates that personal data collected should be adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed. The European Data Protection Board - hereinafter the EDPB [3] has defined the concept of minimization as a primary aspect of the Privacy by Default principle in their Guidelines 4/2019 on Article 25 [4] where it is explained that controllers should consider the volume and types of personal data, the categories and level of detail required for the processing purposes. Collection of personal data, either its category or its detail, that is not necessary for the specific processing purpose is not allowed. Personal data that is used need to be adequate, relevant and limited to what is necessary for the declared purpose.

The key data minimisation elements, according to these Guidelines, include:

- Data avoidance (avoid processing personal data altogether when this is possible for the relevant purpose),
- Limitation (limit the amount of personal data collected to what is necessary for the purpose),
- Access limitation (shape the data processing in a way that a minimal number of people need access to data),
- Relevance (personal data should be relevant to the processing in question, and the controller should be able to demonstrate this relevance),
- Necessity (each personal data category shall be necessary for the specified purposes and should only be processed if it is not possible to fulfil the purpose by other means),
- Aggregation (use aggregated data when possible),

- Pseudonymization (pseudonymize personal data as soon as it is no longer necessary to have directly identifiable personal data)
- Anonymization and deletion (delete or anonymize personal data that is not, or no longer necessary for the purpose),
- State of the art (apply up to date and appropriate technologies for data avoidance and minimisation).

These guidelines then, like the GDPR provisions, point to a structured system of defining the relevance and adequacy of the kind of data that is to be used to fulfill the declared legal purpose of processing.

2.4 The impact of the minimization principle to official statistical production

This minimization requirement contradicts traditional production practices in official statistics, where extensive and at times unchecked data collection of an abundance of data, regardless of their direct relevance to the specific purpose, was not a source of great concern.

Official statistics producers working under the GDPR must ensure that their data practices are balancing the need for detailed data to inform society with the need to protect individual privacy by implementing minimization of their data.

Minimization impacts all aspects of statistical production:

Data collection is impacted, as producers of official statistics need to be more vigilant and precise in their decisions on the categories and amount of data they collect and cannot just ask for any data that might seem relevant.

Data processing is impacted. Restricted access to data, encryption and pseudonymization are ways to ensure that no risk comes to personal data while they're being processed by humans. Processing by electronic means all together with no human interference would also be a way to ensure minimization while in the processing phase.

Data retention is impacted. Statistical producers are now required to set specific retention periods and to be able to justify their relevance to a specific purpose.

Data sharing has also been impacted, as the volume and categories of data that are being shared need to be scrutinized and well documented as to their reasons and uses.

3. Case study - mandatory use of privately held data in official statistics

There is a commonly found notion that minimization requires the use of non-personal data as the default setting. This could be the case in certain areas of processing, but not in official statistics, as will be shown below.

In order to demonstrate how minimization works in official statistics, we will use the example of the mandatory use of privately held data in official statistics, a topic that is currently in discussion in the European legal landscape, as it is introduced as a new element for official

statistics in the amendment processes of Regulation 223/2009. The relevant Commission proposal, Recital 14 [5] in particular reads: "Where the activities to be carried out under this Regulation involve the processing of personal data, such processing should comply with the relevant EU legislation on personal data protection, namely Regulation (EU) 2018/1725 of the European Parliament and of the Council and Regulation (EU) 2016/679 of the European Parliament and of the Council. In accordance with the data minimisation principle set out in these regulations, data provided under this Regulation should normally be aggregated to such a degree that individuals cannot be identified."

Considering the purpose of use of these data, i.e. official statistical production, and the direct mention of the minimization principle, which means that the data that is necessary for the purpose is the data to be used, it would then be concluded that the norm for official statistical production would be the use of aggregated data as raw material. This is not the case, as it is individual data that is predominantly used for the production of official statistics, so this declaration does not really serve the minimization principle.

There is a predetermined way for the decision to be made about the particular category and type of data that is needed for official statistical production, whether it is fully identifiable, pseudonymised or anonymous data to be used, and that is the statistical methodology of the particular statistical product. The requirements of this methodology describe the declared purpose of statistical production and the necessity of use and that is where the decision of what data is needed for the purpose to be fulfilled is to come from. This is then what will also define how the data minimization principle is to be implemented in official statistics.

4. Results

Minimisation states that personal data is to be used to the extent necessary and appropriate for the data controller to fulfill their declared legal purpose, in this case the production of official statistics. The necessity and appropriateness of the data to be used shall be determined by the methodology of each statistical product. It will not in this sense be by default anonymised or pseudonymized. Article 89 of the GDPR regarding use of data for statistical production also states that when using personal data to produce statistics, appropriate measures are needed to protect these data and that those measures may include pseudonymisation/anonymisation, provided that the statistical purposes can be fulfilled in that manner.

This means that the question of whether fully identifiable, pseudonymised or anonymous data are to be used in official statistics is to be answered by the particular methodological requirements of the statistics produced, which is what defines the data that is needed to conduct the research.

5. Conclusions

The data minimization principle is to be implemented in the context of the aforementioned provisions and guidelines in all cases and in official statistical production in particular.

This is the basis for understanding how the data minimization principle is to be implemented in the official European statistics landscape under the GDPR:

- a) Minimization affects all aspects of statistical production, from collection to data sharing.
- b) The combination of the aforementioned GDPR articles and the EDPB Guidelines results in the rule that adherence to the data minimization principle does not imply the use of non-personal or anonymized data. Minimization states that personal data is to be used to the extent necessary and appropriate for the data controller (statistical producer) to fulfill their pre-declared lawful purpose, in this case, the production of official statistics.
- c) Reference to article 89 of the GDPR and accompanying recitals regarding primary and further use of data for statistical production reiterates and solidifies this notion, as the article states that when using personal data to produce statistics, appropriate measures are needed to protect these data and that those measures may include pseudonymization/anonymization, provided that the statistical purposes can be fulfilled in that manner.
- d) This means that the question of whether fully identifiable, pseudonymized or anonymous data are to be used in official statistics is to be answered by the particular methodological requirements of the specific statistical produced, which describe the declared purpose and necessity of use of data in that sense.
- e) The GDPR clearly states that personal data that have been collected for any other purpose can be used for statistical production without a separate legal basis, as the use for statistics is considered per se to be a further use compatible with the original purpose within the specifications of Article 89. This means that under the GDPR it would be legally valid to collect data from other data holders in order to produce statistics, even without a specifically declared legal basis, as the processing of data for statistical production is considered compatible further use, and that these data would need to be pseudonymized only if such a form would allow for the fulfillment of the statistical purpose.
- f) The GDPR points to the meaning of statistical purpose and clarifies that a prerequisite for these special provisions regarding statistics to apply is 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 the validating reason for these deviations provided for

statistical production in the data protection ecosystem and it points of course to the Principles of Official Statistics, especially the notion of confidentiality, as this is what constitutes the main instrument through which both the raw data and the statistical outcomes are ensured to not be used to support measures or decisions regarding any particular natural person.

- g) The GDPR also directly refers to official statistical principles, which in their entirety ensure the appropriate safeguards for the protection of personal data, when these data are processed for the production of official statistics.

It is under this light that it seems the future of official statistics would benefit from moving more towards the use of privacy-enhancing technologies or the use of pseudonymized data sets, which would allow for minimization requirements to be fulfilled without highly restricting statistical data collection to protect privacy, while statistical methodologies will strive to explore the balance between data privacy and data utility.

References

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ANNEX

Relevant provisions of the GDPR

Article 5 - Principles relating to processing of personal data

1. Personal data shall be:

- a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');
- b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation');
- c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
- d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
- e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');
- f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality')

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

Article 6 - Lawfulness of processing

1. Processing shall be lawful only if and to the extent that at least one of the following applies:

- a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

- b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- c) processing is necessary for compliance with a legal obligation to which the controller is subject;
- d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

2. Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing for compliance with points (c) and (e) of paragraph 1 by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:

Union law; or

Member State law to which the controller is subject.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

That legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing situations as provided for in Chapter IX.

The Union or the Member State law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

4. Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, take into account, inter alia:

any link between the purposes for which the personal data have been collected and the purposes of the intended further processing;

the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;

the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 10;

the possible consequences of the intended further processing for data subjects;

the existence of appropriate safeguards, which may include encryption or pseudonymisation.

Article 89 - Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

1. Processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of data minimisation. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

2. Where personal data are processed for scientific or historical research purposes or statistical purposes, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article 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.

3. Where personal data are processed for archiving purposes in the public interest, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18, 19, 20 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this

Article 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.

4. Where processing referred to in paragraphs 2 and 3 serves at the same time another purpose, the derogations shall apply only to processing for the purposes referred to in those paragraphs.

Recital 39 - Principles of Data Processing

Any processing of personal data should be lawful and fair. It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed. The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used. That principle concerns, in particular, information to the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed. Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing. In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. The personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, ensuring that the period for which the personal data are stored is limited to a strict minimum. Personal data should be processed only if the purpose of the processing could not reasonably be fulfilled by other means. In order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. Personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including for preventing unauthorized access to or use of personal data and the equipment used for the processing.

Recital 50 - Further Processing of Personal Data

The processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected. In such a case, no legal basis separate from that which allowed the collection of the personal data is required. If the

processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union or Member State law may determine and specify the tasks and purposes for which the further processing should be regarded as compatible and lawful. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be considered to be compatible lawful processing operations. The legal basis provided by Union or Member State law for the processing of personal data may also provide a legal basis for further processing. In order to ascertain whether a purpose of further processing is compatible with the purpose for which the personal data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account, inter alia: any link between those purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of data subjects based on their relationship with the controller as to their further use; the nature of the personal data; the consequences of the intended further processing for data subjects; and the existence of appropriate safeguards in both the original and intended further processing operations. Where the data subject has given consent or the processing is based on Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard, in particular, important objectives of general public interest, the controller should be allowed to further process the personal data irrespective of the compatibility of the purposes. In any case, the application of the principles set out in this Regulation and in particular the information of the data subject on those other purposes and on his or her rights including the right to object, should be ensured. Indicating possible criminal acts or threats to public security by the controller and transmitting the relevant personal data in individual cases or in several cases relating to the same criminal act or threats to public security to a competent authority should be regarded as being in the legitimate interest pursued by the controller. However, such transmission in the legitimate interest of the controller or further processing of personal data should be prohibited if the processing is not compatible with a legal, professional or other binding obligation of secrecy.

Recital 156 - Processing for Archiving, Scientific or Historical Research or Statistical Purposes

The processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be subject to appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation. Those safeguards should ensure that technical and organisational measures are in place in order to ensure, in particular, the principle of data minimisation. The further processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or

statistical purposes is to be carried out when the controller has assessed the feasibility to fulfil those purposes by processing data which do not permit or no longer permit the identification of data subjects, provided that appropriate safeguards exist (such as, for instance, pseudonymisation of the data). Member States should provide for appropriate safeguards for the processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. Member States should be authorised to provide, under specific conditions and subject to appropriate safeguards for data subjects, specifications and derogations with regard to the information requirements and rights to rectification, to erasure, to be forgotten, to restriction of processing, to data portability, and to object when processing personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. The conditions and safeguards in question may entail specific procedures for data subjects to exercise those rights if this is appropriate in the light of the purposes sought by the specific processing along with technical and organisational measures aimed at minimising the processing of personal data in pursuance of the proportionality and necessity principles. The processing of personal data for scientific purposes should also comply with other relevant legislation such as on clinical trials.

Recital 162 - Processing for Statistical Purposes

Where personal data are processed for statistical purposes, this Regulation should apply to that processing. Union or Member State law should, within the limits of this Regulation, 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. Statistical purposes mean any operation of collection and the processing of personal data necessary for statistical surveys or for the production of statistical results. Those statistical results may further be used for different purposes, including a scientific research purpose. 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.

Recital 163 - Production of European and National Statistics

The confidential information which the Union and national statistical authorities collect for the production of official European and official national statistics should be protected. European statistics should be developed, produced and disseminated in accordance with the statistical principles as set out in Article 338(2) TFEU, while national statistics should also comply with Member State law. Regulation (EC) No 223/2009 of the European Parliament and of the Council¹ provides further specifications on statistical confidentiality for European statistics.