

*Privately Held Data
in the Statistical Agenda:*

*Legal concerns about
individual rights and
the role of “public interest”*



Outline

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8. Conclusions - Recommendations



2. The main question

Is the use of 'public interest' claim appropriate and adequate tool to promote sustainable access to privately held data?

- Concerns: focus on privacy
- **Argument:** The law will effectively achieve the policy goal of sustainable use of new privately held data sources if it can effectively address data ethics considerations around public interest.



3. Relevance of the discussion

Main arguments in the statistical world

- High priority in the statistical agenda
- Official statistics represent a distinct public interest purpose and an essential public good that benefits all.
- Relevance, efficiency, better timeliness, higher granularity and accuracy
 - *Evidence: Successful pilot projects and experiments
- Less burden on respondents
- Insights into phenomena that have not been measured so far
- Competitive against a global digital business that monetises the data



4. Legal challenges

Key obstacles to unlocking the power of data

- Lack of a specific legal basis
 - Lack of clarity
 - Clear provisions but privacy or confidentiality concerns
- ❓ breach of law, negative impacts in terms of companies' reputation, harm to trust and credibility of NSIs

NEED FOR A SPECIFIC LEGAL BASIS TO ENSURE SUSTAINABLE ACCESS, INVESTMENTS, RESOURCES



4. Legal challenges

Compulsory access to privately held data poses significant challenges to individual autonomy and fundamental human rights.

- Privacy: without data subject's consent
- Reidentification by data linkage
- Drafters of existing legal texts could not envisage the current technological landscape
- Proliferation of data-sharing initiatives
- Data ethics discussion on the table



5. The public interest and the public good

General functions of public interest

- Legitimises the authorisation of power to public bodies: usually defined in law or determined by the official authority itself within the law
- Justifies limitations on individual rights (e.g. Art. 8 par. 2 ECHR, 8 par. 2 and 52 par. 1 EU Charter, Art. 6 par. 1 (e) GDPR)
- A central principle in data ethics discussions – interchangeable with public good



5. The public interest and the public good

Public interest and official statistics

- Official statistics as a public good: satisfy the information needs of the society, freedom of information.
- Production of official statistics already defined as a public interest in EU law.
- Which specific information is needed in the public interest? who decides?
- Legislative body, statistical authority, users?



6. The public interest in the proportionality test

How far can the interference with individual rights go for the benefit of official statistics?



- Not absolute BUT need to respect the essence of the rights



6. The public interest in the proportionality test

How far can the interference with individual rights go for the benefit of official statistics?

- **Safeguards:**
 - The least intrusive measure: risk minimisation
 - Accountability and responsibility of the statistical authority and the data holder: transparency and security obligations
 - Data ethics evaluations for each data collection and data dissemination
 - Independent Data Ethics Committees composed of multidisciplinary experts and individuals' representatives



7. Access to privately held data: an example

How far can the interference with individual rights go for the benefit of official statistics?

- Big data repositories
- Profiling mechanisms of online activity
- Who gives us access
- Who owns the information
- How deep do we want to go



8. Conclusions and Recommendations

- Main concepts: individual rights (privacy), public interest/public good, balancing/proportionality exercise.
- Need to move from limited experimentation based on ad hoc and voluntary cooperation agreements with data holders to the systematic use of new data sources [?] Ensuring access to privately held data will help statistical offices to fulfil their public interest missions
- Understandable to stipulate a uniform legal basis covering all private sectors and countries as a minimum



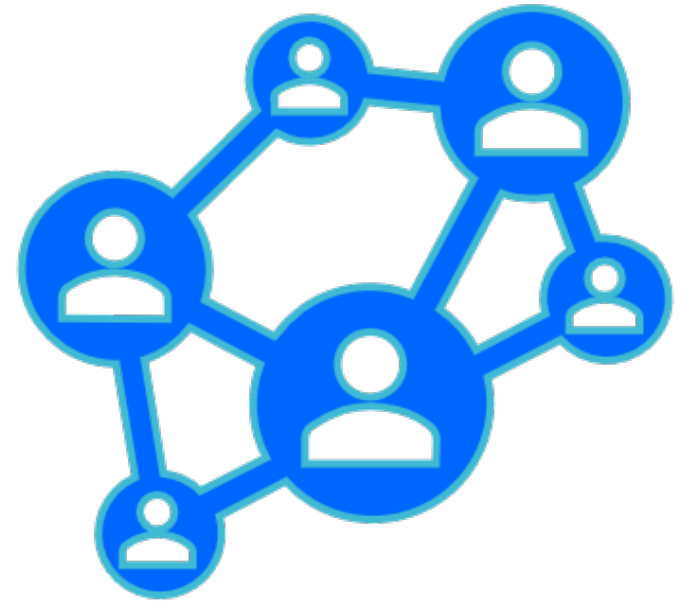
8. Conclusions and Recommendations

HOWEVER

- Need for flexibility, to allow room for adaptation
- A legal basis does not suffice
- Implement and communicate data ethics evaluations
- Engage the public and the stakeholders in data ethics discussion



The law will effectively achieve the policy goal of sustainable use of new privately held data sources if it can effectively address data ethics considerations around public interest.





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Thank you for your attention!

Questions?