



# *UNECE Expert Meeting on Modernizing Statistical Legislation*

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Statistics and privacy and data protection EU legal framework.  
Challenges from a data driven world also in the light of the  
Guidance on Modernizing Statistical Legislation

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# The EDPS

The **European Data Protection Supervisor**:  
is an EU independent institution.



Wojciech Wiewiórowski  
EDPS

Tasks and powers:

- **Supervise** data processing done by EU institutions and bodies
- **Advise** the EU legislator and appear before the EU courts
- **Monitor** new technologies with an impact on privacy
- **Cooperate** with other supervisory data protection authorities
- **Provide Secretariat** to the European Data Protection Board (**EDPB**) and participate as a member



# Agenda

- EU privacy and data protection legal framework & statistics
- European statistics, statistical confidentiality and disclosure for research purposes
- Considerations on the 'Guidance on Modernizing Statistical Legislation and personal data protection
- Current developments in EU data governance



# Two fundamental rights

## Privacy

Art. 8 ECHR (1950):

“Everyone has the right to respect for his or her private and family life, home and correspondence “

**Article 7 EU-Charter**  
(2000): “and communications...”

## Data protection

### Article 8 EU-Charter

Article 16 TFEU

“Everyone has the right to the protection of personal data concerning him or her.” +

“Consent or other legitimate legal basis laid down by law” +

“Independent authority supervision”



# EU Charter – Scope and interpretation

- **Article 52 – Scope and interpretation**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others ....

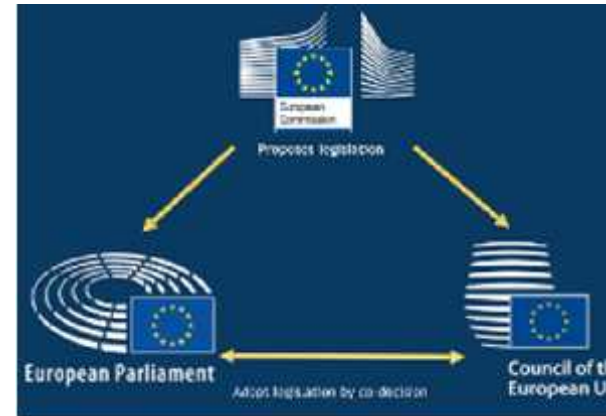


# EU Legal Framework



## For EU Member States

Since 25 May 2018: the General Data Protection Regulation (GDPR) & Directive (EU) 2016/680 + ePrivacy Directive 2002/58/EC on privacy and electronic communications (under review).



## For EU institutions, bodies and agencies

Since 12 December 2018: Regulation 2018/1725 (data processing done by the European Parliament, the European Central Bank, Eurostat etc.



# What is personal data?



- Any information relating to an identified or identifiable natural person (“data subject”) (Art. 4(1) GDPR)
- *Examples:*
  - **Any information**
    - Name, e-mail address,, credit card number, photo, ...
  - **Identified or identifiable (see Recital 26 GDPR)**
    - VAT number, tax number, national ID number, fingerprint, online unique identifiers, location data ...
    - **Not** anonymous data (including for statistical or research purposes)
    - **Yes** pseudonymisation, singling out (so ... **microdata on individuals when indirect identifiers still exist** or if attributes allow re-identification.... what about a BIG DATA / AI context ?)
  - **Natural person** ≠ public organisation, company, legal entity...



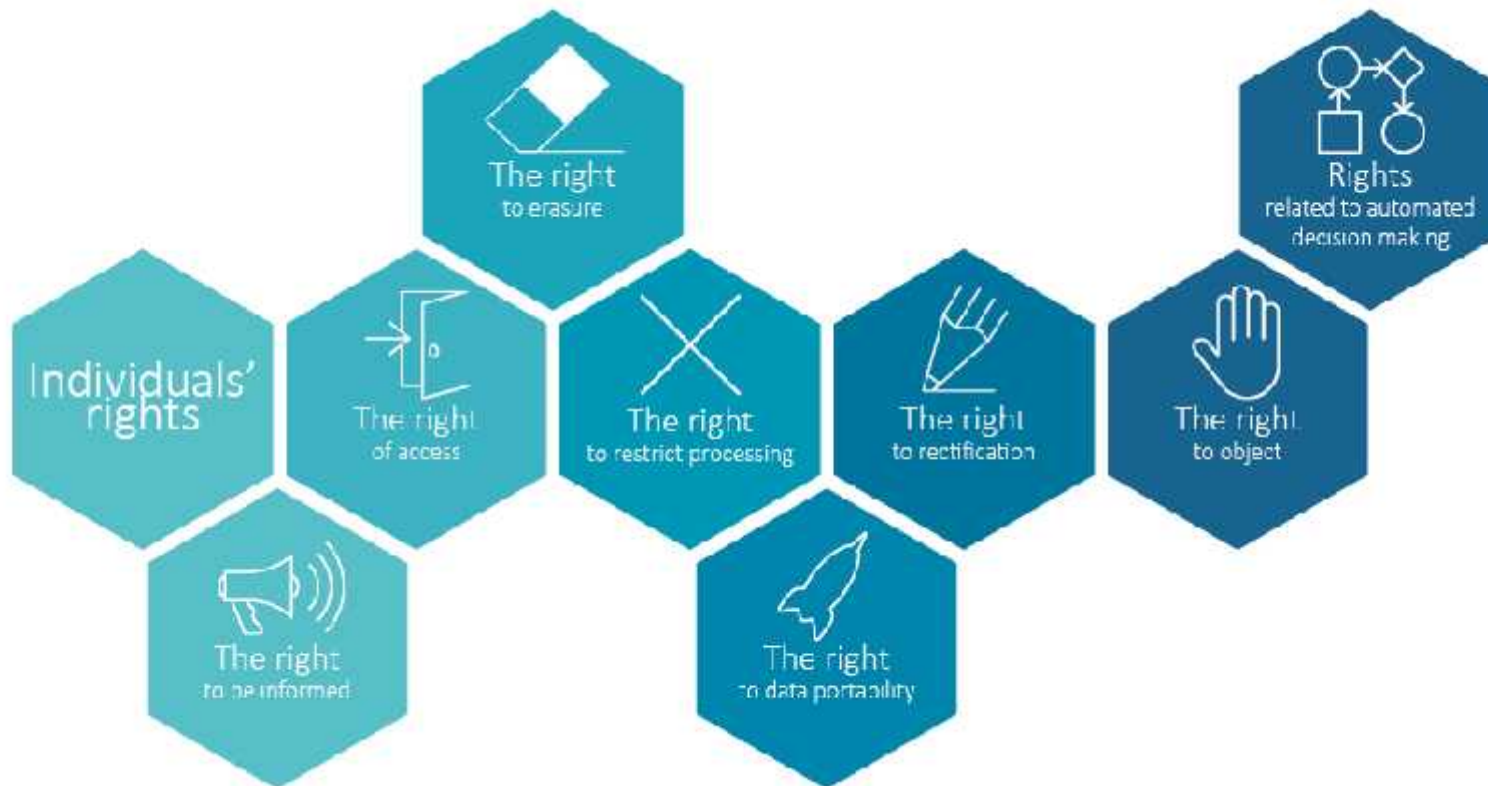
# Principles of the processing

- Lawfulness, fairness and transparency
- Purpose limitation
- Data minimisation (necessity & proportionality)
- Accuracy
- Storage limitation (data 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)
- Integrity and confidentiality
- Accountability





# GDPR data subjects' rights



# GDPR and statistics

- Recital 162 GDPR
  - **GDPR applies** to processing of personal data for **statistical purposes**
  - Statistical purposes = *“any operation of collection and the processing of personal data necessary for statistical surveys or for the production of statistical results”*
  - Statistical purpose -> **result is NOT personal data, but aggregate data**  
and **result or the personal data is NOT used in support of measures or decisions regarding any particular natural person**      **NOT USED FOR TARGETED DECISION MAKING !**
  - Results may further be used for different purposes, including a scientific research purpose
  - **LIMITATION AND MANDATE FOR PROTECTION TO STATISTICAL LAW:** *“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”*



# GDPR and official statistics

- Recital 163 GDPR
  - *“**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 Council provides **further specifications on statistical confidentiality** for European statistics”*

**So, GDPR protection for personal data as statistical «confidential information » integrated by applicable EU law on statistics and statistical confidentiality**



# GDPR and statistics

- Article 5 (data protection principles)
  - “... **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**”.
  - ... **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 ... ”
- Article 9 (special categories of data)
  - **Derogation from prohibition of processing special categories of data** for archiving purposes in the public interest, **scientific** or historical research purposes or **statistical purposes** in accordance with Article 89(1) **based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures** to safeguard the fundamental rights and the interests of the data subject



# GDPR and statistics

- Art. 89 – Safeguards and derogations for processing for archiving purposes in the public interest, **scientific** or historical research **purposes or statistical purpose**
  - **Obligation** to apply **appropriate safeguards** for the rights and freedoms of the data subject, in particular to ensure **data minimisation**, including **pseudonymisation (if purposes allow)**. **If purposes allow, anonymise data.**
  - **Possible derogations, subject to safeguards**, from right to access (Art.15), to rectification (Art.16), to restriction of processing (Art.18) and the right to object (Art.21) *“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”*



# EU statistics in EU legislation

- Article 338 TFEU
  - EP and EU Council using ordinary legislative procedure shall adopt measures for the production of statistics where necessary for the performance of the activities of the Union.
  - The production of Union statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and **statistical confidentiality ....**
- Definition of confidential data and statistical confidentiality measures in Reg. (EC) No 223/2009 on European statistics
- Access to confidential data for scientific purposes in Reg. (EU) No 557/2013 **(only indirect identification of statistical units – including individuals)**
  - so...further use of personal data collected for statistics provided by law under Reg. 223/2009, with safeguards



# EDPS on processing for scientific research

- [A Preliminary Opinion on data protection and scientific research \(Jan 2020\)](#)
- Extensive coverage: special regime, legal bases as consent and public interest, right to information, derogations, purpose limitation, storage limitation, accountability
- Key recommendations for further work:
  - DPAs and Ethical review boards to work more closely
  - Beneficial role of EU Codes of Conduct and certification for research activities
  - Researchers should seek guidance from data protection experts and authorities in the development of research proposals
  - **Foster a debate on a public interest ground for scientific research**



# EDPB on processing for scientific research

- [Guidelines 03/2020 on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak](#)
  - Legal basis
  - Data protection principles and exemptions
  - Rights of data subjects
  - International transfers
- Key remarks:
  - Derogations and limitations within data protection law to be enacted ONLY if strictly necessary
  - Since specific categories of data and large scale (at least) DPIA ex Art.35 is necessary





# Common framework for European statistics relating to persons and households

- Reg. (EU) 2019/1700 establishing a common framework for European statistics relating to persons and households, based on data at individual level collected from samples
- Recital 28 – Applicability of EU data protection law. **Statistical data** required for the purpose of developing and monitoring Union and national actions and strategies **in the areas of public health and health and safety at work should be regarded as data processed for reasons of substantial public interest.**
- Article 9 (Data sources and methods) – Member states to use these sources:
  1. **information directly provided by the respondents**
  2. **administrative records and other sources, methods or innovative approaches insofar as they allow for the production of data that are comparable and compliant with the applicable specific requirements** laid down by this Regulation.



# Common framework for European statistics relating to persons and households

- Article 12 (Sampling frames) - The sampling frames shall **also include the information needed to link persons to other administrative records, in so far as linking to such other records is necessary and proportionate and specifically permitted under the applicable Union or national law** ... which also lays down suitable measures to safeguard the data subjects' rights and freedoms and legitimate interest.
- Article 15 – (Access for scientific purposes to confidential data) - The Commission (Eurostat) may grant **access on its premises to confidential data and may release sets of anonymised microdata** from the data sets for the domains referred to in Article 3, **for scientific purposes and under the conditions laid down in Regulation (EU) No 557/2013**
- **[EDPS Opinion 2/2017 on the EC proposal](#)**
  - clarification of legal bases for information directly provided by respondents
  - need for ensuring that any such linking must be done in compliance with data protection law subject to necessity, proportionality, and specific safeguards under Member State or Union law.



# The Guidance on modernizing statistical legislation

Some proposals from the Guidance (and my traffic lights vs data protection guarantees) :

- **Clarifying (where missing) the definition of official statistics** (need for legal certainty, in particular with a view of an expanded scope) ●
- **Safeguarding confidentiality should always be regulated by law with explicit prohibition of disclosure or handing over if not provided by law. Anonymisation before publication.** ●
- **Strict confidentiality of individual data “*throughout its lifecycle*”** (-> data protection by design and by default) ●
- **Need for the acquisition and adoptions of state-of-the-art information technology (IT)** (personal data need state-of-the-art technical and organisational measures, GDPR Art 25 on data protection by design and by default and Art. 32 on the security of processing) ●
  - **Explore and foster options for privacy-preserving computation techniques in statistics**
- **Penalties for breaches of confidentiality** (fine, but **consider also judicial redress !**) ● ●



# The Guidance on modernizing statistical legislation

- **Professional independence of statistical offices** (the more personal data they obtain and process, the greater the responsibility and the need for absence of conflicts of interest in particular with a view to a growing role of NSOs) ●
- **High professional ethics relying on the Fundamental Principles of Official Statistics, the European Statistics Code of Practice, national and international standards etc.** (explore also the option of GDPR Codes of Conducts ex Art. 40 and Certifications ex. Art. 42) ●
- **Well-defined rights and responsibilities of the producers of official statistics** (for better accountability) ●
- **Statistical legislation should include the main principles of official statistics that affect the quality of statistics**, including objectivity, accuracy, reliability, timeliness, coherence, relevance (increases also the quality of personal data collected) ●



# The Guidance on modernizing statistical legislation

- The NSO should have the authority to permit access to microdata for researchers under certain conditions and terms. These conditions should be included in the statistical law, and include the following principles: use limitation, project purpose and specification, data minimisation, confidentiality privacy and security, avoidance of conflict of interest by the researcher, accountability (data protection principles !) ●
  - The authority of the NSOs should be anyhow carefully regulated by law, based on the nature of data and the risks for individuals ●
- The law on statistics should include provisions that oblige all national and local authorities and private bodies to provide data in their possession to the producers of official statistics, if needed for statistical purposes and as far as appropriate within the policy settings of the public sector of the relevant jurisdiction. If so, all necessary data protection safeguards and adequate independent monitoring should be ensured. ●
  - How is necessity assessed? If largely interpreted, risks of generalised surveillance and profiling look very high.



# The Guidance on modernizing statistical legislation

- **Statistical legislation should contain a strong mandate for the producers of official statistics to acquire data for statistical purposes from any source without limitation on retention and use** ● ●
  - **Source reliability ? What about data quality? Big data come from sources where data quality, objectivity and reliability is questionable. What about data retention provisions for personal data? Necessity « ad aeternum »? What about purpose limitation in the law?**
- **Special attention needs to be put on the application of data privacy acts to statistical activities and on the relation of the statistical law and other legislation related to privacy. The NSS needs to have access to all data required for statistical production without any limitation from other than statistical legislation.** ●
  - **This is highly questionable. Privacy and data protection are so high within the fundamental rights in the EU Charter to require the existence of independent authorities for their regulation**



# The EU data strategy

- EC Communication – A European strategy for data – 19 February 2020
  - “A single European space where personal and non personal data are secure ... and where ... businesses and the public sector in the EU can be empowered through the use of data **to make better decisions**”.
  - Intention to unlock the full potential of the re-use of public sector information, of privately held data for other businesses and for governments, while upholding EU values (including privacy and personal data)
    - “**not enough private sector data available for** use by the public sector to improve evidence-driven policy-making and **public services such as** mobility management or **enhancing the scope and timeliness of official statistics**”
  - Need for reinforce data governance as an enabler as we as foster adequate European data infrastructures and technologies
    - **legislative framework for the governance of common European data spaces**



# The EU data strategy

- [EDPS Opinion on the European Strategy for data](#)

Among the topics tackled:

- Concept of public good and **the notion of “public interest” in data protection law**
- Role of “data intermediaries”
- Open Data
- Data for scientific research
- Common European data spaces
- **Governance frameworks for data access and use**
- Use of privacy preserving technologies





## A quote: the essence of a fundamental right

*“The concept of the essence of a fundamental right—set out in Article 52(1) of the Charter of Fundamental Rights of the European Union (the “Charter”)—operates as a constant reminder that **our core values as Europeans are absolute**. In other words, **they are not up for balancing**. As the seminal judgment of the Court of Justice of the European Union (the “CJEU”) in Schrems shows, **where a measure imposes a limitation on the exercise of a fundamental right that is so intense and so comprehensive that it calls into question that right as such, that measure is incompatible with the Charter, as it deprives the right at issue of its essence**. This is so **without the need for a balancing exercise of competing interests**, because a measure that compromises the very essence of a fundamental right is automatically disproportionate”*

Koen Lenaerts, President of the Court of Justice of the European Union



*Thank you!*



**For more information:**

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