

Policy rule of the director general of statistics of 1 August 2021, No. CSB-2021-072, on the criteria for granting institutions access to microdata of Statistics Netherlands (Institutional Access to CBS Microdata Policy Rule)

The director general of statistics,

Having regard to Section 41 of the Statistics Netherlands Act,

Hereby orders as follows:

Article 1

The following definitions shall be used in this policy rule:

CBS: Statistics Netherlands;

director general: the director general of statistics;

main establishment: if an institution has establishments in more than one country, the main establishment is the place where the institution's central administration is located, unless the decisions on the purposes and means of the processing of CBS microdata are taken in another establishment of the institution, in which case the establishment where the decisions are taken is considered to be the main establishment;

microdata: anonymised linkable data containing characteristics of units within a population, such as persons, addresses or companies, that are used to compile aggregated information;

processing establishment: establishment of an institution where CBS microdata are processed;

Statistics Netherlands Act: the Statistics Netherlands Act.

Article 2

1. The director general may upon request grant an institution an institutional authorisation for access to CBS microdata.
2. An institution must make a separate request for project consent for each research project.

Article 3

1. An institutional authorisation for an institution to which Section 41(2)(a), (b), (c) or (d) of the Statistics Netherlands Act applies shall be valid for a maximum of three years.
2. An institutional authorisation for an institution to which Section 41(2)(e) of the Statistics Netherlands Act applies shall be valid for a maximum of one year.
3. An institution may apply to renew its institutional authorisation.
4. An institutional authorisation may be renewed for a maximum term of three years.

Article 4

1. An institution shall only qualify for an institutional authorisation or renewal of the institutional authorisation if it has its main establishment and processing establishment in:
 - a. the European part of the Netherlands;
 - b. a Member State of the European Union or another State party to the Agreement on the European Economic Area; or

- c. a country or part thereof for which an adequacy decision has been adopted by the European Commission under Article 45 of Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJEU 2016, L 119).
2. Paragraph 1(c) shall apply only insofar as the adequacy decision referred to in that subparagraph applies to the processing of personal data for academic or statistical purposes by the institution concerned.

Article 5

1. An institution to which Section 41(2)(e) of the Statistics Netherlands Act applies and which meets the criteria in Article 4(1) can only qualify for an institutional authorisation or for renewal of the institutional authorisation if it meets at least the following criteria:
 - a. the institution is a legal entity or part of a legal entity;
 - b. the institution is of good repute;
 - c. the institution has:
 - 1°. as its main activity conducting statistical or academic research, and the other activities of the institution do not constitute a risk that CBS microdata will be used for purposes other than statistical or academic research; or
 - 2°. a separate stand-alone research department (enclave) that is fully dedicated to conducting statistical or academic research; and
 - d. the institution or enclave conducts statistical or academic research which meets the following criteria:
 - 1°. the research and related activities meet the criteria for statistical or academic research, such as diligence, transparency and independence;
 - 2°. the institution publishes its research results in an accessible manner; and
 - 3°. the institution ensures that its research has a statistical or academic research design.
2. A main activity, as referred to in paragraph 1(c), is said to exist if at least 60 percent of the workforce conducts research.

Article 6

1. To apply for or renew an institutional authorisation, an institution must fully complete the application form, which is available on the CBS website.
2. An institution to which Section 41(2)(e) of the Statistics Netherlands Act applies shall demonstrate that it meets the criteria in Article 4(1) and Article 5 by submitting at least the following supporting documents to CBS:
 - a. a recent copy of an entry in the Trade Register of the Chamber of Commerce;
 - b. a copy of the articles of association;
 - c. an active, verifiable link to previous statistical or academic publications.
3. The application form must be signed personally by the head of the institution and, in the case of an enclave, also by the head of the research department to be authorised.
4. The application form and supporting documents shall be in Dutch or English.
5. If, after the institutional authorisation has been granted, there are any changes to the information supplied, the institution shall complete the application form again so that it can be examined whether the authorisation can remain valid.

Article 7

1. This Article applies solely to institutional authorisations issued prior to 1 August 2021.
2. An institution may apply for renewal after the term of the authorisation has expired, in which case CBS will assess the application against the requirements of this policy rule.
3. If the application referred to in paragraph 2 is refused and:
 - a. the institutional authorisation expires before 1 August 2022, it shall continue solely for projects in progress until the end of the project, and until 31 July 2022 at the latest.
 - b. the institutional authorisation expires after 1 August 2022, it shall continue until the end of its current term.

Article 8

This policy rule shall enter into force on 1 August 2021.

Article 9

This policy rule shall be cited as the Institutional Access to CBS Microdata Policy Rule.

This policy rule and the explanatory notes shall be published in the Netherlands Government Gazette.

The Hague, 8 July 2021

The Director General of Statistics

A. Berg

EXPLANATORY NOTES

I. General

1. Motivation and aim

CBS collects data with the aim of conducting reliable statistical research on account of the government for practice, policy and academic research purposes. Many statistics are published on the CBS website as news items and open data in line with a fixed programme. In addition, CBS provides additional statistical services at the request of government bodies in particular. The data published by CBS on its website cannot be traced back to individual persons, companies or institutions.

Under Section 41 of the Statistics Netherlands Act, the director general is authorised to grant access to a set of data to a department, organisation or institution as referred to in Section 41(2) of the Statistics Netherlands Act. This allows external organisations to make use of the databases held by CBS for the purpose of academic or statistical research. By giving external researchers the opportunity to work with the data, society gains maximum benefit from the multitude of data managed by CBS, as this makes far more research possible than CBS could do itself. The databases may contain privacy-sensitive information. CBS may only make data available in respect of which it has taken appropriate measures to prevent the identification of individual persons, companies or institutions. It is very important, therefore, that security is in place for the use of such data and that researchers handle it with care, so that the privacy of citizens and companies is protected. The databases that these researchers work with have been pseudonymised by CBS, i.e. directly identifiable personal and company characteristics have been replaced with a meaningless number (the pseudo-key). In addition, CBS has taken security measures and ensures, through contractual agreements, awareness measures and monitoring, that researchers handle these data with care, so that the privacy of citizens and companies remains protected.

Organisations that meet all the requirements of this policy rule can gain access to the data collected by CBS using remote access, subject to strict conditions. External organisations are subject to at least the same security and privacy requirements as CBS. The remote access facility has developed into a socially relevant CBS service for academic and policy research.

In view of the rapidly growing user numbers, new technical developments and developments in the field of information security and privacy, CBS commissioned a study into remote access to CBS databases. This was carried out by a committee of independent scientific experts under the chairmanship of Professor B. van den Berg, Professor of Cybersecurity Governance, Leiden University. CBS took the results into account in a new policy on access to CBS microdata. The director general may, if he/she so wishes, lay down policy rules for the exercise of the powers under Section 41 of the Statistics Netherlands Act. This policy rule gives substance to this.

2. Content of the policy rule

The committee concluded that the remote access facility has high academic and social relevance and meets all the current security and privacy requirements. Continued attention to security and privacy will be needed to ensure this for years to come. The committee recommended that the policy frameworks should be made more explicit and transparent. In addition to the committee's recommendations, CBS has looked at ways of better aligning policy with the Statistics Netherlands Act and the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJEU 2016, L 119) (General Data Protection Regulation, hereinafter referred to as 'the GDPR').

This has led to some tightening up of policy regarding access to and use of CBS databases. The policy rule clarifies the conditions for institutions so as to ensure that the use of microdata in the remote access facility is for the purpose of statistical or academic research that meets standards of diligence, verifiability and independence. It also clarifies what is meant by publishing the results of the research. The conditions for access have also been tightened up so as to guarantee privacy even more.

CBS is required to comply with the GDPR and wishes to make its data available solely to organisations in countries that have a demonstrably adequate level of security. It therefore grants access solely to institutions, departments and organisations in countries that fall under the scope of the GDPR (in the European Economic Area) or to which an adequacy decision of the European Commission applies. This means that institutions in the special municipalities of Bonaire, St Eustatius and Saba are not granted access. See also the article-by-article explanatory notes to Article 4.

Enforcement

CBS verifies whether institutions are complying with the conditions for protecting personal data and preventing disclosure. In the event of a breach of the conditions, CBS may take action. The CBS website includes an overview of possible breaches and measures (<https://www.cbs.nl/en-gb/onze-diensten/customised-services-microdata/microdata-conducting-your-own-research/rules-and-sanctioning-policy>).

3. External consultation/input

This policy rule was submitted for consultation to the CBS Advisory Board and discussed at its meeting on 2 July 2021.

4. Administrative burden

Institutions applying for an authorisation must complete the application form and submit supporting documents. That was already the case in the old situation. As an institutional authorisation is issued for a maximum of three years instead of five and must therefore be renewed more often, there is a slight increase in the administrative burden.

5. Transitional arrangement

The policy rule enters into force on 1 August 2021.

For reasons of legal certainty and reliability, CBS is introducing a transitional arrangement. If an institutional authorisation expires before 1 August 2022 and the renewal application is refused, the authorisation will continue solely for projects in progress until the end of the project, and until 31 July 2022 at the latest. If the institutional authorisation expires after 1 August 2022, it will continue until the end of its current term. A project can easily take several months. This transitional arrangement gives institutions a reasonable period in which to complete projects in progress.

6. Evaluation

This policy rule will be evaluated three years after its entry into force, looking at the experiences of users and CBS, the effects of this policy rule on users and CBS, and technological progress and any new insights in the area of data protection.

II. Article-by-article notes

Article 1

Article 1 sets out the definitions used in this policy rule. The GDPR was taken into account in the definitions of 'main establishment' and 'processing establishment'. Microdata are personal data and the provision of microdata by CBS to an institution is therefore a processing of personal data. Although the microdata are only accessible via a secure environment and cannot be exported from that environment, CBS considers it desirable for institutions solely in countries that fall within the European Economic Area or under an adequacy decision to gain access to them. This applies both to the establishment where control over the data processing is exercised and to the establishment where the microdata are actually processed.

Article 2

This article refers to the power of the director general to grant institutions access to CBS microdata under Section 41 of the Statistics Netherlands Act. The policy rule is therefore only concerned with authorisations at institutional level. An institutional authorisation is an order within the meaning of the General Administrative Law Act. The director general will in principle make the order within eight weeks of receiving the application. A negative decision can be appealed against in the following ways: objection and appeal.

CBS also uses project consents. An institution must therefore obtain consent for each research project. Paragraph 2 refers to the existence of project consent. The conditions for obtaining project consent are beyond the scope of this policy rule.

Article 3

Institutions that fall under Section 41(2)(e) of the Statistics Netherlands Act can obtain an institutional authorisation for a maximum of one year. This is a shorter term than for institutions that fall under subparagraphs (a)-(d), which can obtain an institutional authorisation for a maximum of three years. The reason is that institutions in the latter category have a statutory duty to carry out academic or statistical research, which is often not the case with institutions that fall under Section 41(2)(e) of the Statistics Netherlands Act. Also, institutions that fall under Section 41(2)(e) of the Statistics Netherlands Act are more likely to be doing work other than academic research. Limiting the term of an authorisation to one year provides a natural evaluation point at which to assess experience with the institution and the way in which it is conducting and publishing research based on CBS microdata. If experience is positive, the institution can obtain a three-year renewal of the authorisation. Normally an institution applies for an extension toward the end of the institution's authorisation term. The institution should do so in a timely manner to prevent the risk of being temporarily denied access. After all, processing the application takes time.

Article 4

This article lays down how the director general implements the GDPR with regard to the transfer of microdata under Section 41 of the Statistics Netherlands Act to countries outside the Netherlands and outside the European Economic Area. As a result, institutions, departments and organisations outside the European Economic Area and for whose countries no ‘adequacy decision’ has been issued can no longer gain access to CBS microdata. This also applies to the special municipalities of Bonaire, St Eustatius and Saba, which have their own privacy legislation and are regarded as third countries under the GDPR.

Article 5

This article lays down what criteria an institution to which Section 41(2)(e) of the Statistics Netherlands Act applies must meet in order to qualify for an institutional authorisation or renewal thereof. CBS verifies whether these minimum requirements are met.

Paragraph 1(a) lays down that the institution must be a legal entity or part of a legal entity. The law offers the option of granting access to data or providing data to organisations, institutions and departments. According to the Explanatory Memorandum to the Statistics Netherlands Act (House of Representatives, 2001–2002 session, 28 277, No. 3), such access can only be granted to the departments, organisations and institutions referred to in paragraph 2, which should be read restrictively. In addition to the categories referred to in Section 41(2)(a)-(d) of the Statistics Netherlands Act, the law refers in Section 41(2)(e) to “research departments of ministries and other departments, organisations and institutions”. It follows from this wording that the department, organisation or institution must be a legal entity. Sole proprietorships, limited partnerships, partnerships under a common firm and partnerships do not meet this definition and do not therefore qualify for an institutional authorisation.

The statutory criterion in Section 41(1) of the Statistics Netherlands Act “for the purposes of statistical or academic research” is contained in criteria regarding the nature of the organisation and of the activities that it carries out. As regards the nature of the organisation, paragraph 1(c) lays down that the institution or its research department must be conducting academic or statistical research. The criteria regarding the activities carried out by the organisation are elaborated in paragraph 1(d).

An institution will only be granted access as a complete institution if its main activity is conducting statistical or academic research. The term ‘main activity’ refers to the majority of the activities. For this purpose CBS sets a lower limit of 60 percent of the workforce expressed as a full-time equivalent (hereinafter referred to as ‘FTE’) engaged in the main activity. An institution must demonstrate to CBS that it meets this criterion, by means of e.g. an annual plan, articles of association or staffing accounts including the distribution of roles. The Explanatory Memorandum to the Statistics Netherlands Act (House of Representatives, 2001-2002 session, 28 277, No. 3) explicitly states that CBS microdata must be used solely for statistical purposes, hence use for other purposes such as tax, administrative, auditing and judicial purposes is ruled out. To prevent the use of CBS microdata for such other purposes, CBS verifies whether the institution carries out activities that entail risks. For example, the risk of improper use of the data is higher if an institution carries out investigation activities than if it provides general advisory services.

A research department that wishes to qualify for an authorisation must be fully dedicated to conducting statistical or academic research. The main criterion is that the department operates as an

independent organisational unit with its own manager. In addition, CBS sets a lower limit for the size of a research department at a minimum of 3 FTE if the organisation employs less than 25 FTE, or a minimum of 5 FTE if it employs 25 FTE or more. The above-mentioned criteria relate to the staff actually conducting research. A department may also include a manager and support staff who are not involved in research. They will not be included in the verification of whether a research department is fully dedicated to statistical or academic research and the verification of whether the above-mentioned lower size limit has been met. Staff may have other duties in addition to their work as researchers. Here again, the other activities must not pose the risk of CBS microdata being used for other than statistical or academic purposes, and use for other purposes such as tax, administrative, auditing and judicial purposes must be ruled out.

Paragraph 1(d) lays down that the institution or enclave must be able to demonstrate that it conducts research that meets the criteria for statistical or academic research. CBS uses the definition of academic research as laid down in the Dutch Code of Conduct for Scientific Integrity (2018) (<https://doi.org/10.17026/dans-2cj-nvwu>), which describes not only principles of academic research, but also standards of good research practice and an institution's duties of care. Some of the principles described in the Code of Conduct are also explicitly included in the policy rule for illustrative purposes. This is therefore a non-exhaustive list.

The institution publishes its research results in an accessible manner. The institution's basic policy is to publish the results of its research in the form of academic articles, research reports, policy memorandums or public documents for the House of Representatives, a city council etc., in academic journals or books, or by making them available via open access on its own website or that of a scientific knowledge platform. To enable this to be verified, the institution provides a list of up-to-date verifiable links. Publishing in an accessible manner also means that at least a substantial part of the publications must be in Dutch or English so as to enable the institution's publications to be verified against the criteria in this policy rule.

The institution must ensure that its research has a statistical or academic research design. An academic article or research report contains such things as a research question, method and data description, discussion/conclusions and sources; a parliamentary paper or policy memorandum contains a question, source description and study methodology appropriate to its nature and scope.

Article 6

This article explains that an institutional authorisation can be applied for using an application form and what the requirements are.

Paragraph 1 lays down that an institution must fully complete the application form, which can be found on the CBS website. CBS will only process fully completed forms.

Paragraph 2 lists three pieces of evidence that must be submitted as a minimum. This evidence also used to be requested prior to the introduction of this policy rule. The purpose of this information is to enable verification of whether the institution's aim is to conduct statistical or academic research and whether the institution publishes for the public. CBS may request additional supporting documents.

Paragraph 3 lays down that both the head of the institution and the head of the research enclave, if applicable, must sign the application form. In this way CBS aims to create awareness and

responsibility within the institution and ensure that these people in the institution take responsibility for complying with the agreements with CBS.

CBS will only consider application forms and supporting documents that are in Dutch or English. It has been decided to accept English as well as Dutch, as English is a language commonly used in the research world. Application forms and supporting documents in a different language will not be considered.

An institution must immediately report to CBS any changes that could affect an authorisation that has already been granted, after which the authorisation will be reconsidered. These include such things as a reorganisation or merger of the institution concerned. They do not include a change in the address or head of the institution. If all the criteria are no longer being met as a result of the changes, the authorisation may be withdrawn immediately or within a maximum period of one year.

Article 7

The transitional arrangement has already been explained in paragraph 5 of the general part of these explanatory notes. Article 7 lays down the transitional arrangement for institutional authorisations issued prior to 1 August 2021, which were consequently assessed on the basis of the old conditions. All applications, both initial applications and renewals, made from 1 August 2021 onwards will be assessed on the basis of this policy rule.

The Director General of Statistics

A. Berg