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Policy rule of the Minister of Economic Affairs and Climate Policy dated 19 April 2020, no. WJZ/19207028, on Statistics Netherlands' (CBS) performance of its duties (Policy rule on Statistics Netherlands' (CBS) performance of its duties)

The Minister of Economic Affairs and Climate Policy,

Having regard to Section 21 of the Autonomous Administrative Bodies Framework Act and Sections 3–5 of the Statistics Netherlands Act;

Hereby decrees as follows:

§ 1 Definitions

Article 1

The following definitions shall be used in this policy rule:

additional statistical services: statistical services which are not funded from the general contribution of the Minister of Economic Affairs and Climate Policy;

Director General: Director General of Statistics Netherlands;

innovative project: a project which investigates whether the use of new technologies or processes leads to better statistics or to a more efficient process to generate those statistics; *CBS*: Statistics Netherlands.

§ 2 Provision of services

Article 2

1. CBS shall refrain from actively seeking requests for additional statistical services.
2. In particular, CBS shall refrain from:
 - a. competing for an assignment for which a contract tendering process has been initiated under the Public Procurement Act 2012;
 - b. independently approaching parties to offer statistical services;
 - c. generally seeking out customers in order to provide services in markets in which private providers operate.
3. Notwithstanding the first and second paragraphs, opening lines and under b, CBS is permitted to actively approach a government body if this is required due to substantial public interests.

Article 3

CBS shall not make the provision of a statistical service dependent on the commissioning of other additional statistical services from CBS, unless those additional statistical services are inextricably linked to the first service and unless the use of both services is necessary to ensure the quality and clarity of the findings or to protect the data of people and businesses.

§ 3 Procedural steps for granting a request

Article 4

1. Before CBS grants a request to provide an additional statistical service, CBS shall identify the

considerations that underpin the decision to commission CBS to provide the service.

2. Before CBS initiates the provision of an additional statistical service not governed by the Statistics Netherlands regulation on the activities of third parties, CBS shall consider whether the service could be provided, in full or in part, by a private statistical service provider; if all or part of the statistical service could be provided by a private service provider, CBS shall inform the requesting party of this option.



3. CBS shall refrain from commissioning a private statistical service provider to carry out part of a service, as referred to in (2), if the requesting party objects to such a commission.
4. The provisions contained in (2) do not apply in the event that the remuneration for the service which, in full or in part, could be carried out by a specific private statistical body is lower than the sum stated in the 'Circular Tax-facilitated Amounts for Public Procurement Act 2012 procedures below the threshold value', under which conditions a single direct award is appropriate in any case.

§ 4 Passing on of costs and specification of the costs

Article 5

CBS shall charge the total cost price for the provision of additional statistical services, unless the additional services are intended for Eurostat.

Article 6

In the case of a project proposal for an additional statistical service, matters including but not limited to the following must be specified:

- a. the activities or products to be provided;
- b. the number of hours to be spent on the additional statistical service per project phase and scale level;
- c. the calculation and composition of the hourly rate per scale level.

§ 5 Procedure for innovative projects

Article 7

In the description given in the work programme, as referred to in Section 15(3) of the Statistics Netherlands Act, CBS sets out its considerations as to why an innovative project is carried out by CBS, including the consideration of the interests of market actors.

§ 6 Procedure for collaborative projects

Article 8

Where data or methods and techniques are shared within the framework of a collaboration with a private data supplier or a private statistical service provider, CBS shall sign an agreement with this supplier or service provider recording how those data, or those methods and techniques, will be used, insofar as this is relevant to the supplier or service provider's market activities.

§ 7 Internal review and complaints procedure

Article 9

1. The Director General shall ensure that a competition specialist is present within CBS who provides CBS with impartial advice on the application of this policy rule and of the Statistics Netherlands regulation on the activities of third parties.
2. At least once per year, the competition specialist referred to in (1) shall submit a written report to the Director General regarding the activities referred to in (1).

Article 10

1. The Director General shall ensure that there is an independent complaints committee to which market actors can submit complaints regarding CBS's actions in respect of the application of this policy rule and of the Statistics Netherlands regulation on the activities of third parties.
2. The Director General shall take no decision about handling such a complaint before the independent complaints committee has produced its advice on the matter.
3. The independent complaints committee shall inform the Advisory Council of the number of complaints, the nature of the complaints and the Director General's decisions regarding these complaints.



Article 11

The Director General shall request the Advisory Council to include compliance with this policy rule as a permanent agenda item at the Council's meetings.

§ 8 Final provisions

Article 12

This policy rule shall enter into force on 1 July 2020.

Article 13

This policy rule shall be cited as: Policy rule on Statistics Netherlands' (CBS) performance of its duties. This policy rule and the explanatory notes shall be published in the Netherlands Government Gazette. *The Hague, 19 April 2020*

*The Minister of Economic Affairs and Climate Policy,
E.D. Wiebes*



NOTES

I. General

1. *Motivation and aim*

There has been a significant increase in recent years in the numbers both of valuable data sources and of providers of information, including statistical information, and other data services. Digitisation offers notable opportunities to improve statistics, and market actors have effectively taken advantage of these opportunities. Statistics Netherlands (hereinafter: 'CBS') has also capitalised on these developments in an innovative way, with the result that CBS and market actors increasingly encounter each other in the market for statistical services. At the request of the Ministry of Economic Affairs and Climate Policy, Mr Noé van Hulst has provided independent advice on clear basic principles for CBS when granting requests to provide statistical services. A letter to the House of Representatives dated 26 April 2019 indicates that there is a lack of clarity regarding the division of roles between CBS and market actors (Parliamentary Paper 35 000 XIII, no. 81). It is not clear which assignments CBS should and should not carry out. As a result, a grey area has arisen in which it is unclear whether CBS is the designated provider, or whether provision should be left to a market actor. On 12 July 2019, the House of Representatives was informed of Mr Van Hulst's advice and I indicated my agreement with his analysis and my intention to adopt his recommendations (Parliamentary Paper 35 000 XIII, no. 84).

A range of measures were taken to this end, including this policy rule. The policy rule relates to the additional statistical services provided by CBS: the services which are not funded from the contribution from the Ministry of Economic Affairs and Climate Policy. This policy rule also applies to the provision of additional statistical services to third parties, insofar as the Statistics Netherlands regulation on the activities of third parties does not set out a separate regime (see Article 4(2) and (3), and the associated explanatory notes). The Statistics Netherlands regulation on the activities of third parties was drafted pursuant to Section 5(2) of the Statistics Netherlands Act and contains rules governing the activities which CBS is permitted to carry out on behalf of third parties.

These measures may be implemented without prejudice to the independent nature of CBS's production of statistics. CBS's autonomy is established in law. First, CBS is an autonomous administrative body and not hierarchically answerable to the minister. Secondly, its independence is further secured in the Statistics Netherlands Act. Finally, this autonomy is established in European legislation regarding European mandatory statistics (Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (PbEU 2009, L 87), hereinafter: 'Regulation 223/2009').

In accordance with Section 21 of the Autonomous Administrative Bodies Framework Act, the Minister of Economic Affairs and Climate Policy may establish a policy rule regarding CBS's performance of its duties. CBS's duties are set out in Sections 3–5 of the Statistics Netherlands Act. The policy rule establishes the procedural preconditions according to which the CBS's duties, as set out in the Statistics Netherlands Act, must be carried out. The policy rule cannot place restrictions on CBS's duties. Within the legal framework, and after following the procedures set out in the policy rule, CBS independently determines the details of its long-term programme and work programme and decides the methods and format used to publish statistics. This is set out in Dutch and European legislation and regulations to guarantee the professional autonomy of the provision of statistical information.

The objective of the measures is to create greater clarity as to the division of roles between private statistical service providers and CBS, as well as to facilitate improved relations between CBS and certain market actors and industry associations with the aim of benefiting from more opportunities for productive collaboration. For this reason, CBS focuses more clearly on its core tasks, and when providing additional services or carrying out innovative projects CBS always considers the interests of market actors.

2. *Content of the policy rule*

This policy rule concerns CBS's performance of its duties, in particular its provision of additional services. The policy rule first discusses the methods CBS is not permitted to use to obtain requests for the provision of statistical services; CBS may not actively pursue acquisition or engage in tying. The policy rule next specifies the procedure CBS must follow upon receiving requests or starting a project. The primary aim of this procedure is to enable requesting parties to consciously consider whether they would prefer the service to be provided by CBS or by a private statistical service provider. Secondly, the procedure is intended to ensure that CBS considers the interests of market actors.



Finally, the policy rule sets out how CBS must organise feedback and independent complaint handling regarding the application of this policy rule and of the Statistics Netherlands regulation on the activities of third parties. Within the organisation, CBS appoints an independent person and organises independent complaint handling.

3. Consultation

This policy rule was put out for online consultation between 11 November 2019 and 23 December 2019. Six responses were received during the consultation period.

Some responses contained comments relevant both to the Policy rule on CBS's performance of its duties and to the Statistics Netherlands regulation on the activities of third parties, both of which were put out for online consultation simultaneously. The points which relate to the regulation will be discussed in the explanatory notes on that matter.

Some respondents indicated that they had had good experiences in their collaboration with CBS. These responses showed that access to CBS from education, academia, the public sector and the business community is very important.

Another respondent believed that the current policy rule is not sufficiently far-reaching; this respondent wanted CBS to be put under more pressure to scale back its activities.

The policy rule aims to ensure that CBS follows the correct procedures when taking on new services. CBS must also explicitly concern itself with the interests of market actors. This will require CBS to show greater reticence when accepting new service provision opportunities.

Active acquisition

As multiple respondents requested greater clarification of the meaning of 'active acquisition', as referred to in Article 2 of this policy rule, the explanatory notes for this article have been updated accordingly. However, no exhaustive list of activities will be included.

It also emerged that the former text of Article 2 (2)(a) can be read to mean: CBS is not in general permitted to carry out assignments for a contracting authority. To clarify this point, this article now states that CBS may not compete for an assignment for which a contract tendering process has already been initiated.

Finally, a new third paragraph has been added to Article 2, setting out an exception to the prohibition. This exception was incorporated into the text as a result of new insights gained from the outbreak of Covid-19. See also the article-by-article explanatory notes to Article 2.

Access to CBS's microdatasets

Three respondents indicated that access to CBS's microdatasets must continue to be guaranteed. Access to microdatasets is enshrined in the Statistics Netherlands Act. Rather than being a statutory duty of CBS, the provision of the microdatasets is a power granted to the organisation. Section 37 of the Statistics Netherlands Act sets the primary rule that the data CBS receives for the purpose of carrying out its statutory duty shall not be provided to any persons other than those charged with carrying out the duties of the CBS.

The law specifies that the Director General may make an exception when the situation concerns the provision of microdatasets for statistical or scientific research, provided that the data cannot be traced to specific persons. An obligation to make these files available would not fit within the statutory framework.

One of the respondents indicated that there is insufficient transparency surrounding which microdatasets CBS has. However, the CBS website includes an open data site and a microdata catalogue.

Checks and balances

One of the respondents felt that checks and balances were not sufficiently robust, as they are conducted within CBS itself. The policy rule assigns the task of monitoring compliance with the policy rule and with the regulation to the organisation itself. In addition to these checks and balances in the policy rule, an extra member will be appointed to the Advisory Council who has knowledge of competition law and who has the expertise to determine whether the policy rule and ministerial regulation are being properly applied.

4 Administrative burden

There is no administrative burden. This consequences of this policy rule apply solely to CBS.



II. Article by article

Article 2

This article establishes that CBS must not actively seek out requests for additional statistical services. This does not detract from the fact that CBS is consulted by authorities in relation to data-driven working. Although this consultation may result in requests, it is not a form of active acquisition. In fact, even if during this consultation CBS were to assist authorities in formulating the details of a given research question, it may become clear that all or part of the research itself could easily be conducted by a third party. In such a case CBS would be required to inform the government body of this, even if CBS had already been involved in the preparatory phase (Article 4(2)).

The second paragraph provides examples of activities which clearly fall within the meaning of actively seeking out requests, but this list is not exhaustive. CBS must always bear in mind whether its actions could be interpreted as active acquisition.

Situations may arise in which CBS is required to take an active role, for example during the Covid-19 outbreak in the Netherlands this year. It is inconceivable that CBS should have valuable information that could help shape policy in a situation with such substantial public interests, and yet not be permitted to share that information with the relevant bodies.

Article 3

This article prohibits the practice of tying. CBS is not permitted to make the provision of a statistical service conditional on the requesting party also commissioning other services from CBS. It goes without saying that this prohibition still applies, even if a project is made up of various sub-projects which could be implemented separately from each other and which could reasonably be carried out by different providers. In the event that a service is inextricably linked to the service provided by CBS, and that such a link is relevant to the quality and clarity of the results or serves to protect the data of persons or businesses, this is not a case of tying; rather, the services provided are seen as a single entity.

Article 4

CBS is familiar with the market for the provision of statistical services, as CBS has an extensive network and must take into account its position relative to private statistical service providers. CBS must identify the considerations that underpin the decision to commission CBS to provide the service (paragraph 1). Considerations which could play a role in the decision to commission CBS instead of a private statistical service provider may relate to safeguarding privacy, guaranteeing continuity in the provision of statistical information, or ensuring full transparency of methods and techniques. Sometimes, market actors may be unable to provide the service. Registration of and transparency surrounding such considerations help CBS and the Advisory Council to monitor the effect of the policy rule. In accordance with Article 11, the implementation of and compliance with the policy rule form a permanent agenda item in Advisory Council meetings.

Where CBS is aware that an additional statistical service could be provided using the services of private actors, CBS will inform the requesting party of this (paragraph 2). In such a case, CBS must state that the possibility exists but is not required to name a specific private statistical service provider. It is up to the requesting party to decide whether the service will be provided by CBS or by a private statistical service provider. It is also possible for part of the service to be provided by a market actor. Before CBS initiates the implementation of a new additional statistical service, it must consider whether in so doing it is operating within the bounds of that service (paragraph 2). When making this consideration, CBS can include all information relevant to the specific statistical service in question, such as whether outsourcing would satisfy the privacy safeguards CBS is required to offer, or whether the project needs to be carried out so urgently that outsourcing would not be a realistic option. This may also be determined in consultation between CBS and the requesting party.

If the requesting party objects to outsourcing, the project will not be outsourced (paragraph 3).

The second and third paragraphs do not apply to services which are governed by the Statistics Netherlands regulation on the activities of third parties. This regulation sets out its own regime for the use of private service providers to provide statistical services for third parties. If the third party does not agree to this use of a private service provider, CBS will not perform the duties (see Section 3 of the Statistics Netherlands regulation on the activities of third parties).

The fourth paragraph contains an exception for services for which the remuneration is lower than the sum stated in the 'Circular Tax-facilitated Amounts for Public Procurement Act 2012 procedures under the threshold value', under which conditions a single direct award is appropriate in any case.



The Circular that is currently in force may be found on the website of PIANOo, the public procurement expertise centre for the Ministry of Economic Affairs and Climate Policy:
<https://www.pianoo.nl/sites/default/files/documents/documents/gewijzigde-circulaire-grensbedragen-procedures-aanbestedingswet-2012-per-1-sept-2015.pdf>.
The current minimum sum mentioned in this Circular is €33,000.

Article 5

Article 5 states that CBS must charge the total cost price for additional statistical services. The inclusion of this provision in this policy rule removes any doubt about whether CBS provides its services free of charge. An exception is made for the provision of additional statistical services which CBS carries out on behalf of Eurostat, the statistical office of the European Union. The work CBS does for Eurostat supports and implements the objectives of the European statistical programme. However, the maximum remuneration offered by Eurostat is lower than the total cost price.

Article 6

It is very important to requesting parties that CBS be transparent about the structure of the project proposal. For this reason, this article states that certain matters must be specified in all CBS's proposals. This is a minimum requirement; individual requesting parties may of course make additional arrangements regarding the elements to be included in a project proposal.

Article 7

CBS is constantly developing new methods and techniques to use new and existing data sources to improve statistics, to produce them more efficiently or to find new ways to illustrate social phenomena. This work is funded from the contribution CBS receives from the Ministry of Economic Affairs and Climate Policy to carry out its basic programme. CBS publishes these projects at <https://www.cbs.nl/en-gb/about-us/innovation>. Many innovations involve making incremental improvements to existing statistical processes. Rather than being counted as innovative projects, these refinements may be viewed as regular maintenance. Innovation makes it possible for CBS to work more efficiently. However, certain new and scaled-up potential uses for techniques and methods could also be seen as innovative projects, such as the Bèta products which are currently under development and which are described on the CBS website. These CBS projects can have an impact on the interests and the position of market actors who may be working on a similar project and who may have had to make investments in that project. Section 15(3) of the Statistics Netherlands Act already states that CBS must consider the importance of statistics to practical policy and to science. Article 7 of this policy rule ensures that, when describing this interest in the case of an innovative project, the CBS work programme also explains why CBS is carrying out this project and how it has taken the interests of market actors into account. This may include a decision to commission a market actor rather than develop the innovation in house, to use other forms of collaboration, or to provide securely formulated communication about the project. It is important for the quality and efficiency of the statistical process, and for public confidence in statistics, that CBS always retain the freedom to make its own decisions about the best method or technique to use to produce statistics. This freedom is also established in Section 2(1)(a) of Regulation 223/2009 and in the Statistics Netherlands Act (Section 18).

Article 8

Before CBS gains access to data or to knowledge of unique methods or techniques as part of a collaboration with a private data supplier or private statistical service provider, CBS must enter into an agreement with the private actor in question. In this agreement, CBS and the private actor set out what CBS can do with the data or the knowledge outside the context of the collaboration. Private actors often wish to ensure that CBS will not use the data or the knowledge of methods and techniques to develop activities outside the collaboration which would negatively affect their market position. This provides private actors with clarity, so that misunderstandings regarding CBS's use of the data or the knowledge of methods and techniques no longer present an obstacle to collaboration with CBS. This article relates to voluntary collaboration, and not to the compulsory provision of data contained in the Data Acquisition Decree under Section 33(3) of the Statistics Netherlands Act.



Article 9

In accordance with this article, the Director General must ensure that a competition specialist is present within CBS who provides CBS with impartial advice on the application of this policy rule and on the Statistics Netherlands regulation on the activities of third parties. Mr Van Hulst's advice designates this competition specialist as the Competitive Neutrality Officer (hereinafter: 'CNO'). The CNO must have a clear understanding of the market for the provision of statistical services in order to advise on the application of the policy rule and of the ministerial regulation.

In particular, the advice provided within CBS regarding the application of the policy rule includes the involvement of the CNO in:

- the consideration of why CBS takes on specific services, any meetings with requesting parties on this matter and the recording of such meetings (Article 4(1));
- the consideration of whether an additional statistical service could be partly carried out by a private actor (Article 4(2));
- the written analysis which is carried out before initiating innovative projects (Article 7);
- the agreement which is entered into when beginning a collaboration with a private data supplier or service provider (Article 8).

In particular, the advice provided regarding the application of the ministerial regulation includes the involvement of the CNO in:

- the determination of whether there are any private statistical bodies (Article 2(1)(b) of the ministerial regulation);
- the consideration of whether an additional statistical service could be partly carried out by a private actor (Article 3 of the ministerial regulation);
- the downscaling of activities in the event that CBS becomes aware that a private statistical service provider is willing and able to do the tasks CBS is currently carrying out (Article 4 of the ministerial regulation).

The second paragraph states that, at least once a year, the CNO must submit a written report to the Director General. It is to be expected that the new processes contained in this policy rule will require greater oversight, especially in the first few years, and that the Director General will expect to be informed more often during this period.

In accordance with Section 20(1) of the Autonomous Administrative Bodies Framework Act, the Minister of Economic Affairs and Climate Policy may request a copy of the CNO's report. The report may also form one of the sources of information for the meetings of the Advisory Council (Article 11).

Article 10

This article states that the Director General must ensure that there is an independent complaints committee to which market actors can submit complaints regarding CBS's actions in respect of the application of this policy rule and of the Statistics Netherlands regulation on the activities of third parties. The complaints committee is an autonomous body. This means that complaints cannot be handled by CBS employees who were involved in the situations to which the complaints refer.

This article is in line with Title 9.1 (Complaint handling by an administrative body) of the General Administrative Law Act. The Advisory Council must be informed about the complaint handling.

Article 11

Article 11 states that the Director General must request the Advisory Council to include compliance with this policy rule as a permanent item on the agenda for the Council's meetings. Section 20 of the Statistics Netherlands Act states that one of the duties of the CBS Advisory Council is to provide the Director General with solicited and unsolicited advice on the performance of his duties and the exercise of his powers. Therefore, where appropriate, the Advisory Council can also advise on compliance with this policy rule.

*The Minister of Economic Affairs and Climate Policy,
E.D. Wiebes*