



Regulation from the Minister of Economic Affairs and Climate Policy dated 19 April 2020, no. WJZ/19207030, setting out rules for the work that Statistics Netherlands (CBS) carries out for third parties (Statistics Netherlands Regulation on Activities for Third Parties)

The Minister of Economic Affairs and Climate Policy,

Having regard to Section 5, paragraph 2, of the Statistics Netherlands Act, hereby decrees as

follows:

Section 1

The following definitions apply in this Regulation:

CBS: Statistics Netherlands.

third party party other than a public sector organisation, except a party which:

- a. is predominantly financed by the government, and
- b. is entrusted with a statutory task.

Section 2

1. CBS only carries out statistical work for a third party if:
 - a. the value of the work is less than €10,000;
 - b. no private statistical service provider known to CBS is willing or able to carry out this work;
 - c. the third party uses the information it obtains through the statistical work of CBS to provide services to a public sector organisation; or
 - d. the third party requires the information it obtains in order to perform of a statutory task.
2. CBS does not carry out statistical work for a third party if that work has a duration that exceeds one year.

Section 3

1. Before CBS accepts a request to carry out statistical work for a third party, except in the cases referred to in Section 2, paragraph 1(a), CBS shall consider whether part of the work can be carried out by a private statistical service provider.
2. If the third party raises an objection to part of the work being carried out by a private statistical service provider, then CBS shall not carry out the statistical work.

Section 4

If CBS carries out statistical work pursuant to a long-term agreement signed before 1 July 2020 and it becomes known to CBS that a private statistical service provider is willing and able to perform the work being carried out by CBS, then, subject to the agreement of the commissioning party, CBS shall stop carrying out the statistical work in question within one year of this regulation entering into force.

Section 5

This regulation will enter into force on 1 July 2020.

Section 6

This regulation shall be cited as: the Statistics Netherlands regulation on the activities of third parties.



This regulation shall be published with its explanatory notes in the Government Gazette.

The Hague, 19 April 2020

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



EXPLANATORY 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 statistical information and other data services. Digitisation offers substantial 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 does and does 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 ministerial regulation. The regulation relates to the additional statistical services provided by CBS to third parties, and is adopted pursuant to Article 5, paragraph 2, of the Statistics Netherlands Act (hereinafter: the Act). The Act states that the Minister of Economic Affairs and Climate Policy may lay down further rules for the work CBS is permitted to carry out for third parties in incidental cases. In accordance with Section 21 of the Autonomous Administrative Bodies Framework Act, a policy rule is set out in addition to this regulation detailing how CBS carries out its tasks. The policy rule relates to the additional statistical services provided by CBS. These are 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 this regulation does not set out a separate regime.

This regulation in conjunction with the CBS policy rule forms a package of measures. These measures may be implemented without prejudice to the autonomous nature of the production of statistics by CBS. The autonomy of CBS is established in law. First, CBS is an autonomous administrative body and not hierarchically answerable to the minister. Second, 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).

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 several 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. The purpose of the ministerial regulation is to curtail the work done for third parties by CBS.

2. Content of the ministerial regulation

This ministerial regulation lays down more detailed rules for the incidental work that CBS is permitted to carry out on behalf of third parties. First, it specifies the circumstances in which CBS is still permitted to carry out work on behalf of third parties. This is permitted when the scope of the assignment is limited, when CBS is the only party in a position to carry out the work, when third party will use the results of the work for an assignment being conducted for a public sector organisation, or when the third party requires the information it obtains in order to perform a statutory task. Second, it sets out a series of procedural steps that CBS is required to take when it receives a request from a third party. Finally, it includes a transitional arrangement for those assignments



that CBS is currently carrying out for third parties and which cannot continue following the introduction of this regulation.

3. Consultation

This regulation was put online for the purposes of consultation between 11 November and 23 December 2019. Seven responses were received during the consultation period.

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

Access to CBS services

A large proportion of the respondents indicated that they wish to have continued access to data from CBS and therefore think the regulation is too restrictive. The opportunities for CBS to work on behalf of third parties are already subject to the legal limitations contained in Section 5 of the Statistics Netherlands Act. This states that CBS may only carry out work for third parties in incidental cases. The purpose of this regulation is not to make access to CBS impossible for private parties, but to limit it.

Definition of third parties

One respondent argues that the definition of the term 'third parties' should be expanded to include all additional statistical services carried out by CBS, not just those for private parties.

The legislative history and case law to date show that the conception of what falls within the statutory mission of CBS has evolved over time. The prevailing view is that research for other public sector organisations will usually fall under Section 3 of the Statistics Netherlands Act as such research is conducted on account of the government and is relevant to government policy in the area in question. The respondent bases their view on a definition of third party as contained in the 1996 Explanatory Memorandum to the Statistics Netherlands Act. In recent decades, a shift has taken place in the definition of the phrase 'services for third parties'. To remove some of the ambiguity surrounding this definition, a statement on the use of the term 'third party' is provided in the regulation.

Defining third parties as private parties does not widen the scope of the activities that can be undertaken by CBS. The aim of the ministerial regulation and the policy rule that applies to working on behalf of third parties and public sector organisations is precisely to clarify the division of roles between CBS and market parties. The goal is to prevent unfair competition with market parties. This does not mean that CBS is no longer permitted to carry out assignments for public sector organisations and should limit itself to providing mandatory European statistics.

Third parties with a statutory task

During the consultation, it emerged that some parties which have a statutory task are not predominantly funded by the government. This implies that they cannot use statistical information compiled by CBS to fulfil this statutory task without further regulation, despite having been entrusted with this task by a public sector organisation. Section 2, paragraph 2(c) already included an exception for parties who use statistical information compiled by CBS to provide services to a public sector organisation, but this did not extend to cases where parties need statistical information to carry out their statutory task. For these parties, an additional ground for exception has been included in Section 2, paragraph 1(d) of the regulation. These parties can only make use of the exception to the extent that they require the information to fulfil their statutory task, but not for requests that fall outside of this area.

4. Administrative burden

The ministerial regulation will potentially impose an administrative and financial burden on private parties in the form of notification costs. These will be incidental in nature and will not be substantial.

II. COMMENTARY ON INDIVIDUAL SECTIONS

Section 2

Section 5, paragraph 1 of the Statistics Netherlands Act states that CBS is permitted to carry out statistical work for third parties in incidental cases. Section 2 specifies these cases. This work should fall within the statutory tasks assigned to CBS. First, CBS is permitted to carry out statistical work for third parties if the value of the assignment is under €10,000. In particular, this concerns requests to present existing statistics at a different level or in greater detail. Private providers of statistics are only in a position to add very limited value to this type of service. For this type of service, this limited added value does not justify the higher costs associated with these activities when carried out by private statistics customers.

Second, it has been determined that CBS is permitted to carry out statistical work if no private statistical service provider known to CBS is willing or able to carry out this work. CBS is familiar with the market for the provision of statistical services: the organisation has a comprehensive network and is required to take into account its position relative to private statistical service providers.

In light of this regulation, CBS may ask commissioning parties to begin by undertaking their own search for market participants capable of providing equivalent services.

Third, CBS is permitted to carry out statistical work for a third party if this party then uses the information it obtains through the statistical work of CBS to provide statistical services to a public sector organisation. In these cases, CBS facilitates third parties in carrying out work for a public sector organisation, rather than performing the work for the public sector organisation itself.

Finally, CBS is permitted to carry out work for a third party when that party requires the information it obtains from CBS in order to carry out a statutory task.

Pursuant to Section 4, paragraph 1 of the policy rule on CBS's performance of its tasks, CBS notes the considerations that underpin the decision to commission CBS to provide the service.

The aim of the second paragraph is to ensure that CBS does not carry out long-term work.

Section 3

If CBS does decide to carry out statistical work for third parties, it may be possible to outsource part of the work to a private statistical service provider. Before CBS accepts a request, it considers whether it can make use of this option within the context of the opportunity in question. When making this consideration, CBS may include all information relevant to the specific work at hand, such as whether enlisting a private statistical service provider to carry out part of the work is in line with the privacy standards CBS is obliged to uphold but also whether sufficient quality safeguards are in place or the urgency of the project is such that involving a private statistical service provider is not a realistic option. This may also be determined in consultation between CBS and the requesting party.

In principle, the consideration as to whether part of a specific assignment can be carried out using a private statistical service provider is made by CBS. However, if CBS presents the option of enlisting the statistical services of a private provider to the third party that submitted the request and said party objects, CBS cannot compel them to accept. This then implies that the statistical work will not be carried out (in any case not by CBS).

If CBS is in a position to carry out the work because the value of the assignment is low enough – see Section 2, paragraph 1(a) – the obligation stated in Section 3 does not apply. In that case, it would impose a disproportionate burden on CBS to first investigate whether a private party would be able to perform part of the assignment.

Section 4

This section is concerned with ensuring the efficient and orderly termination of multi-year contracts already entered into by CBS. If, within the duration of a contract, CBS discovers that it would also be possible for one or more private statistical service providers to carry out the work, CBS will consult the commissioning party to consider whether the work can be taken over by the relevant private party. As mentioned in the notes on Section 2, CBS has extensive knowledge of the market for statistical services. At the time when an agreement was entered into, CBS may have been the only party capable of performing the work. However, a private statistical service provider that is able and willing to perform the work currently being carried out by CBS may subsequently have entered the market. If CBS becomes aware of this, by whatever means, it will cease to carry out the statistical work in question within one year, subject to the agreement of the commissioning party.



The obvious course of action is for CBS to round off partial results and transfer the remaining work to a private statistical service provider to be designated by the commissioning party, taking into account the legal provisions on the sharing of privacy-sensitive data. This will be done in consultation with the commissioning party and with the aim of ensuring that their statistical needs are met.

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