

REGULATION OF THE USE OF ADMINISTRATIVE DATA IN HUNGARY

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Abstract

Although the public administration's monopoly position in data management has become less dominant along with the changes in the data-driven economy's utilization patterns, a prominent role has remained. Beyond the fact that public administration has to collect and manage specific data due to legal obligations, the utilization possibilities are broader. The amount and structure of data collected allow service-oriented support of the economy and society.

Historical development influences the actual areas of data management. Continuous learning is to observe the data analysis methods and the regulatory system in line with the needs of practical applications, the regulatory and supervisory organizational environment, or the technological background.

Along with following the guidelines and rules of the European Union in developing the legal background of public data management, exploiting the local opportunities must have a high emphasis. This is a broad topic, including the effectiveness and efficiency of data management processes within the affected organizations. Historical and territorial lessons learned can promote achieving these expectations.

The paper gives an overview of the historical development of data management and its organizational support in Hungary. A critical evaluation of the recent regulation establishes finding the essential focal points of future development.

1. Introduction

There are four critical issues identified in regulating the use and utilization of data in the public sector, including professional content, data protection, technical-IT specificity, and information protection. Due to social, economic, and technological developments, they are expanded with different content elements over time. The government identifies the problem to be solved, makes a decision, creates a strategy, provides conditions, and then assigns a system of rules and institutions to the solution.

The development of the Hungarian regulation and institutional system reflects European tendencies, adjusting to the local peculiarities. This paper gives an overview of data use and utilization history, emphasizing the current regulation and institutional system.

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Figure 1 summarizes administrative data use and the organizational framework of its management and supervision in Hungary.

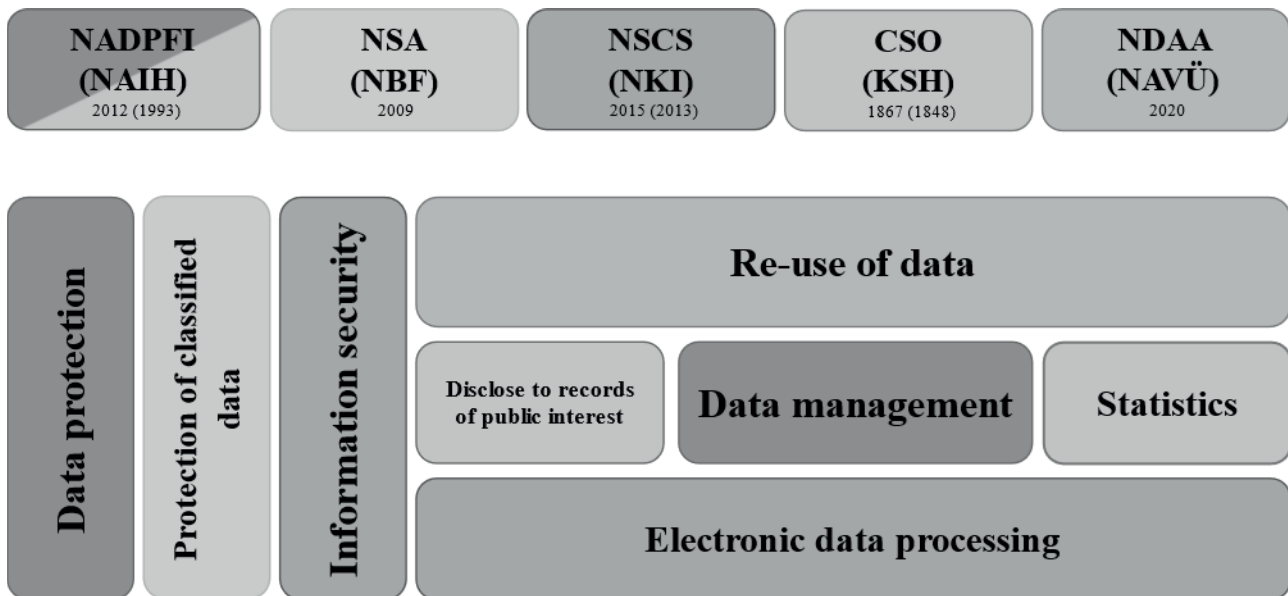


Figure 1: Areas of administrative data use and the organizational framework of its management and supervision in Hungary

The classic form of data utilization by the public sector has been in place for thousands of years, e.g., ancient Babylon or Egypt established a data-based tax system. The goal was to perform public tasks more appropriately. According to the data processing means “any operation or set of operations which is performed on personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction” [40].

The professional standards for data management by the public sector have been and are contained in the sectoral legislation, setting out the scope of the data to be processed and the procedural rules. This scope must be adjusted depending on the actual and local social and governmental expectations.

2. Legislation of statistics

A specific form of data utilization by the public sector is statistical data management. Data recordings in the ancient and medieval, and early modern ages typically served taxations or military purposes. After the 17th and 18th centuries, the new achievements of economics have created the need for accurate data that are able to provide justification for economic theories. Along with, data processing and statistical analysis methods have been appreciated.

The first statistical organizations within public administration were established in the first half of the 19th century in Europe (France, 1834 and United Kingdom, 1836). These organizations collected mainly population data and others for assuring the operation of the public administration.

The institutionalization of the collection of economic statistics from the 1930s onwards can be traced to the middle of the 20th century, according to new economic policies of the world economic

crisis and subsequent reconstruction after World War II. World institutions and organizations like the UN, OECD, or the International Monetary Fund were established in the 20th century, and regional collaborations (EU and its history) boosted up social and economic statistics [24].

Statistics in Hungary in the 19th century covered the separated data collection of some ministries. However, the processes were not effective. The results of the costly and non-professional solutions usually remained unpublished [28].

A central service (called National Statistical Office) was established in 1848 within the organization of the Ministry of the Interior. The goal of the Office was to show the foundations of the planned legislative proposals and to present the impacts. In 1871 the Office became an independent office under the name of the National Royal Hungarian Statistical Office, and since 1897 it has been named the Central Statistical Office (CSO). He published the first Hungarian Statistical Yearbook in 1872, published every year ever since (except in 1891 and 1892) [37].

Legal regulation was soon released:

- The First Statistics Act in 1874 ordered: “the registration of the public status and the public interest relations of the countries of the Hungarian crown, which change from year to year” [47].
- The Second Statistics Act on statistics further specified the purposes of statistics, but, as it included individuals as data subjects, it already contained a data protection restriction: it did not allow the collection of data on the total income or assets of individuals or their non-public items or family, social and moral life [49].
- The Third Statistics Act placed the Office under the supervision of the Prime Minister [45], which puts the role of statistics in developing the social and economic policy at the highest level. In parallel with the Third Statistical Act, another legislative act shows the efforts on the mechanization of tasks. The explanatory memorandum to Article XXV of 1930, which ordered the census, indicated that the census had been carried out every ten years in Hungary as in most cultivated countries since 1880. From 1930 on, new methods and “statistical machines” support the process. They wanted to use an improved version of the Hollerith punch card machine developed by James Powers to publish the results as soon as possible [26] [37].
- Under the planned economy approach after World War II, the Fourth Statistical Act in 1952 established that statistics were a means of monitoring and systematically managing economic, social, and cultural development; reports on the implementation of economic plans but did not include data protection provisions [43].
- The Fifth Statistical Act was adopted in 1973. This act included data protection provisions again. The regulation emphasized that that personal statistics on the personal, family, and other circumstances of an individual may only be used for statistical purposes and that personal statistics on a state, cooperative, social, or other organization may be published or communicated only under conditions laid down by the Council of Ministers. The legislation also provided a practical regulation. Based on this, the data collection, processing, communication, and storage activities within the unified system of state-level statistics (central, sectoral, and territorial) must be carried out according to the same principles [42].
- The Sixth Statistical Act in 1993 has renewed the system. The statistical data collections, except for those required by legal regulations, have been included in the National Statistical Data Collection Program (OSAP) compiled by the Central Statistical Office (CSO), reviewed by the professional advisory body of the President of the CSO (called National Statistical Council) and approved by the government [46]. This act was valid for 23 years, and during

that time, it was modified 27 times. The main reason for the changes is adjusting to the expectations of the European Statistical System (ESS) [30].

Currently, the Seventh Statistics Act promulgated in 2016 is in force, according to which the CSO is a professionally independent, central budgetary organization. The regulation of the statistical data collection and processing goes beyond the responsibility of the CSO. Organizations performing official statistical activities, or publishing statistics as part of their public tasks, must comply with the Code of Practice for National Statistics and the European Statistical Regulation from an organizational and operational perspective. Compliance is established by the Chairman of the CSO in an accreditation procedure [13]. These measures allow a more comprehensive approach to statistical data than ever before.

The Act also states that data produced for official statistics (excluding personal data) are public. Personal data may only be disclosed in cases specified by law. Disclosure is the responsibility of the relevant bodies [13].

3. Some critical issues of data management

3.1. Disclose to records of public interest

Disclose to records of public interest according to the operation of the state and government, as a special way of using public sector data, is a condition and means of enforcing and enforcing the right to free expression of opinion. The decision 32/1992. (V. 29.) of the Constitutional Court stated that access to information of public interest enables the control of the legitimacy and efficiency of elected representative bodies, the executive power, and the administration; and stimulates their democratic functioning [17].

There is an independent institution called the Hungarian National Authority for Data Protection and Freedom of Information (NAIH) established by Article VI of The Fundamental Law of Hungary. NAIH has the authority to enforce access to the records of public interest. The LXIII Act of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest has set unprecedented standards for the disclosure to records of public interest data and the protection of personal data in Europe [32]. By the Act, the public bodies are required to facilitate the accurate and prompt provision of information to the public on matters falling within their remit by regularly publishing or otherwise making available data relating to their activities. The method of electronic publication of this data has been prescribed since 2005 by law [44].

Recently, the CXII Act of 2011 on the right to informational self-determination and the freedom of information prescribes the regulation about disclosure to public interest records. Following the appreciation of digitization, it includes new elements are added. According to the Act, records of public interest should be made available on a website:

- in digital form,
- with access to anyone without identification or other restrictions,
- in detail without loss or distortion,
- free of charge for inspection, download, printing, extraction, and network transmission.

The scope of data to be published is determined by publication lists available at www.kozadattar.hu [18]. Anyone can submit a data request orally, in a written form, or electronically. The deadline for

fulfilling the request is 15 days by default. By implication, the rules for lawful and expedient use are contained in separate legislation.

Freedom of information is a fundamental right but can be limited by law. The restriction may be justified in the public interest under the CXII Act of 2011, including the interests of defense, national security, law enforcement, environment or nature protection, central financial and foreign exchange policy, foreign relations, relations with international organizations, judicial or administrative proceedings. The protection of private interests justifies, e.g., restriction regarding intellectual property rights. According to access to data of public interest, there is separate legislation formed [12]. It regulates the details of management, protection, and access of classified information based on the necessary and proportionate limitations. The National Security Authority (NBF), which has been operating within the Special Service for National Security since 2010, has been responsible for the protection of classified information.

3.2. Data protection

The growing amount of data collected and stored by the public sector and the development of technology to manage the growing volume of data more efficiently led to the emergence of data protection law in the last third of the 20th century.

The national data protection legislation, the LXIII Act of 1992 on the Protection of Personal Data and Publicity of Data of Public Interest, already mentioned in connection with data of public interest, was enacted in 1992, the preparation of which began before the change of regime in the early 1980s. It was planned and an “informatics law” or “information” law, with the contribution of the IT specialization of the CSO [27].

The LXIII Act of 1992 regulated the processing of personal data based on the first binding international data protection instrument, the Convention for the Protection of Individuals concerning Automatic Processing of Personal Data, published by the Council of Europe in 1981. It was found applicable by the EU in 2000 for providing adequate protection of data transfer between Hungary and other EU member states [15]. Before Hungary acceded to the EU in 2004, the first legal harmonization amendment of the Hungarian data protection law took place. Since the LXII Act of 1992 preceded the EU regulation [21], of course, it could not take its provisions into account.

The CXII Act of 2011 replaced the LXIII Act of 1992. It established the Hungarian National Authority for Data Protection and Freedom of Information (NAIH). It is to note that an ombudsman (data protection commissioner) played the role of institution between 1993 and 2011. On 26 June 2018, a relevant modification of the Act was accepted. As a member state of the European Union, Hungary has adjusted its data protection regulation to the General Data Protection Regulation (GDPR) and to the Criminal Data Protection Directive [40] [20] [49]. The adjustment of the sectoral regulation was performed in 2019. While preparing for the GDPR was realized in two years, the preparation of data controllers for the application of the regulations was not smooth. There was an increase in the number of motions for resolutions requesting information that confirms the uncertainty in law enforcement [36]. Managing responsibility for data issues was known within public administration, so GDPR only required some refinements in the regulations. New in that age reported that mainly individual entrepreneurs and SMEs were affected by the significant challenges. The reasons include lack of information, delayed responses of the offices as well as the excessive reactions of the press and consultants [41].

3.3. Technical and electronic data processing

Since 2004, the Hungarian data protection legislation has distinguished technical/electronic data processing (performing technical operations on data) from data management.

In 2010, the concept of national data assets was introduced. On the other hand, the range and limitations of persons and organizations trusted to the tasks related to the creation, operation, and maintenance of electronic records belonging to national data assets are legally defined. In some sensitive areas, the act defines that electronic data processor, which may be either the data controller itself or an exclusive state-owned entity [14]. Tamás Fellegi, the Minister of Development, mentioned “about seventy” companies at that time those have a contract with the government [38]. According to the press, the new concept was launched for safer, more efficient, and cheaper data management.

The Zoltán Magyar Public Administration Development Program (version MP 11.0) in 2011 emphasized the role of the CLVII Act of 2010 as a tool for how to address the causes of the public administration crisis. Centralized authority on data management leads to operational and financial benefits as well. Avoiding accounting debates and other conflicts with a third-party organization could have made it impossible to perform public tasks [35].

Electronic data processing regulation was one of the first stages in the development of the central service provider model.

In accordance with the centralization strategy of the government, the National Info-communication Service Provider (NISZ Zrt.) has been established as the centralized IT and electronic communications service provider to support the IT activities of the public administration organization system. Application operation and application development services (IdomSoft Informatikai Zrt.) and the operation of a unified digital radio telecommunication system (Pro-M Professzionális Mobilrádió Zrt.) are also centralized [5] [7].

While previously data management meant the independent activity of different bodies, institutions, and organizations, due to the spread of e-government, in addition to organizational-level data management, the dimension of data management by the public administration system also appeared (based on the principles of one-time data request and interoperability). Legislation on the electronic transmission of data between public administrations and its technical implementation was adopted in 2007 [6] [11]. From 2015, the regulation raised the transfer of data or documents between cooperating bodies to the level of e-government service [10].

3.4. Information security

The application of the increasingly advanced IT technologies in the creation, collection, storage, processing, use, and generally the management of data and information raises new challenges. Electronic information security became a key issue and a new scientific area both on corporate and governmental levels. Information security has grown into an industry, and its spread continues. Beyond the direct involvement in data protection, the emerging social and business conflicts forced the regulation in the field. Since 2013, the administrative information protection activity has been comprehensively regulated by law for all electronic administrative information systems [29].

According to the regulations, public administration organizations are obliged to establish and operate an information security management system. The adequacy of the measures is monitored by

the National Cyber-Security Center (NKI), also operating within the framework of the Special Service for National Security. NKI is the Hungarian partner of the European Network and Information Security Agency (ENISA). The legal regulations are not without precedent. The LX Act of 2009 on electronic public services and its implementing regulations already set out the safety and quality management standards for the operators and other collaborators of the electronic public service system [31].

The regulation applies the guides of the information security and related management standards offering closed, full, continuous, and risk-based protection that meets the principles and requirements of confidentiality, integrity, and availability [4]. It is to highlight that the government has created regulations for information security beyond the public administration. Among others, the financial sector is well regulated. Fulfillment of the requirements by the financial service provider, the Central Bank of Hungary has the authority to control the certification bodies and the audit processes.

4. Re-use of data

The legal actions of the government follow the changes in the society and try to prevent unfavorable impacts of different threats. The appreciation of electronic data management has opened new battlefields. However, IT offers broader and faster use of information; some problems must be considered. Beyond access to data, the mass of data becomes critical. Storing the giant data set and managing redundancies of the data may lead to safety and efficiency problems. Moreover, the mass of information places a heavy burden on all data providers. A transparent solution saves time and money.

Re-use of information is key to success in the future development of data management. Preventive regulation, including public and other data providers' duties and rights, may promote a better understanding in developing the IT systems. Besides, the formation of awareness must be at high emphasis. However, the process has been launched, the continuous development of the society and IT requires new and new responses.

Legislation on the recycling of public data in 2012 made up for the previous shortfall; this is when the European Union's Public Service Information (PSI) Directive from 2003 was implemented [19] [33]. The former Hungarian opinion stated that the unrestricted and free access to and dissemination of public interest data as well as the obligation to publish covered the requirements set out in the PSI Directive, no special regulation was justified. The new approach separated dissemination and re-use of data:

- Dissemination provides access to the information and fights against hiding the information.
- Regulation of re-use is intended to ensure the processing and use of large amounts of public sector data [25].

In 2015, the regulation ordered a survey of the re-using sectoral practices of public data and the integration of public data provision suitable in sectoral strategies. Furthermore, preparing a White Paper on data policy and establishing a national public data portal were prescribed [1]. Another regulation prescribed the establishment of a public data cadaster with a comprehensive survey of public data assets as well as the preparation of a proposal on the possibilities of recycling non-personal data based on the forthcoming White Paper on data policy [3].

Government activity related to the utilization of data assets intensified again in 2018. Covered by the Digital Prosperity Program (DJP), the Artificial Intelligence Coalition (MIK) operates as a forum of more than 300 members from international and local companies, universities, scientific and public organizations. MIK prepared the Artificial Intelligence Strategy of Hungary in 2020 [2] [34]. The National Data Asset Agency (NAVÜ, established in 2020) plays a role in framing the data economy, including the legal and engineering conditions and the survey of the data set. Academic knowledge on finding the best practices is involved. The change in governmental approach can be described by the note of the executive of NAVÜ, András Levente Gál, who stated that “the Hungarian legal system handles data well, and data assets as goods are less... Legally, data assets must be defined as private law goods, and a subject must be found who deals with them within the public administration. The NAVÜ does this... The fuel for solutions based on artificial intelligence is clean, accessible, well-utilized data, all of which are data assets, and we need to ensure this, for example, in order to implement the domestic AI strategy” [22] [23]. The Parliament received a bill on national data assets From the Hungarian Government in February 2021. This bill preserved the main concept of the former legislation and laid down rules for the key service provider performing technical and technical tasks as well as the operation of the institutions. Cooperation of the agency (National Data Asset Agency, NAÜ) and the council (National Data Assets Council, NAT) based on this regulation, the European data strategy from 2020, and the organizational elements of the draft regulation on European data governance is clear, but the impacts will be assessed during and after the finalization of the regulations [9] [16] [39].

5. Summary

Based on the historical review of the development of the regulation of data management, it can be seen that the regulatory need for data use and data utilization and the legal regulation fulfilling it was always present and developed. The process included the enhancement of the control tools and institutions. The increasing mass and the complexity of data to manage, parallel with information technology development, require rethinking the policies and strategies. Sectoral and sporadic solutions are appropriate as initial stages of finding the best practices, but a centralized approach must come forth.

Nowadays, the “use” of data and the systems that process and store them is inseparable, so the legal regulation of data management and information protection is present in parallel and is continuously evolving. Nevertheless, the information protection regulation is more detailed and elaborate, as in this case, the legislator can build on the decades of professional experience of information security management systems. The legal regulation of data re-use, as the most recent professional topic, has already been established, the detailed professional content is still to be translated into legal form; the Data Assets Act is being amended. The goal can be a comprehensive and flexible system that is ready to adapt to future changes.

The areas and historical stages of administrative data utilization presented in this study are part of the European development of data utilization and closely related data protection, sometimes anticipating, basically following European developments, but always in line with social and economic needs and the EU policy documents and legislative acts.

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