

THE STATISTICAL CONFIDENTIALITY AND THE FRENCH COMMITTEE OF STATISTICAL CONFIDENTIALITY CONCERNING ENTERPRISES

1. The characteristics of statistical confidentiality

1.1. Definition

It is intellectually tempting to make statistical confidentiality a compensation of the obligation to answer the compulsory surveys. But this would mean that when a public statistical survey is not made compulsory, the one who accepts to answer no longer enjoys the protection of confidentiality for the data he transmits. This is of course unacceptable.

In fact, statistical confidentiality is nothing else but the application to the occupation of statistician of the juridical notion of professional secrecy, as defined by the penal code. This applies also to doctors, barristers, lawyers, priests and to all those who, in the practise of their occupation, may be lead to know confidential information that they must not disclose. The repression of the attempt on professional secrecy is heavy : a year in prison and a 100 000 Francs fine. It may also be made worse : deprivation of civil and family rights.

For the civil servants, professional secrecy is reinforced by the obligation of professional discretion, the rupture of which may lead to administrative sanctions.

1.2. Individual commitment ; collective commitment

The obligation of the respect of statistical confidentiality commits both :

- the staff of public statistics, each of them individually (principally concerning the collect and the processing of the data)
- the public statistic institution, taken collectively (principally concerning the diffusion of the data).

Actually statistical confidentiality is the very basis of the statistician's deontology. The guarantee of the respect of this confidentiality is the basis of the public trust in the institution and allows questionnaires to be answered sufficiently for the quality of data gathering and the reliability of the processings and analysis which follow.

Particularly, the staff may not expect any protection from the institution in case of an offence against statistical confidentiality.

1.3. Statistical data ; administrative data

French law authorizes public statistic to use, for statistical purposes, individual files collected by administrations as soon as :

- (i) it is not a question of data related to health or sex life of individuals,
- (ii) there is no opposition of the administrative authority which has collected the data.

It is obvious that the protection of statistical confidentiality covers the data transmitted to statisticians by administrative authorities as well as data directly collected by public statistics.

1.4. Individual data ; aggregated data

The statistical confidentiality consists in protecting respondents against the disclosure of individual data that they declare. The protection of individual data comprises two dimensions :

- (i) the first, a direct one, applies to individual data themselves,
- (ii) the second, an indirect one, often called "statistical confidentiality" applies to aggregated data, as soon as through their fineness they could allow to go back to the individual data which have been used to make them up.

1.5. Personal data ; data related to enterprises

The protection of personal data, that is to say individual data relative to individuals, is reinforced by the January 6th, 1978 law related to data processing, data files, and individual liberties, which aims to protect individuals against the abuse of recourse to data processing. The National Commission of data processing and individual liberties (CNIL) is in charge of verifying the respect of law. The protection concerns both named individual data and the data (possibly aggregated) which are considered as indirectly bearing the names.

For the data related to enterprises, CNIL is not competent except for the sole proprietorships. The law of 1951 for obligation, coordination and secrecy in the matter of statistics applies then directly for the secrecy related to enterprises data.

1.6. Dispensations to statistical confidentiality

French law provides for two exceptions to the principle of statistical confidentiality.

The first one, mechanical, is written in the french criminal law and it is the only one with a general nature. In the frame of a criminal investigation, an examining judge may have access to any documents held by any administration ; this general principle does not provide for an exception in consideration of the questionnaires of statistical surveys.

For the second one, it has been acknowledged that the preservation of a principle of absolute secrecy concerning the data related to enterprises was not optimal notably concerning the needs of research, but also of legitimate applicant. That is why a (french) committee of the statistical confidentiality related to enterprises has been set up ; it is in charge in the frame of law (which forbids any use of the data collected by statistics for purposes of tax control or economic repression) of giving in the name of the National council of statistics (CNIS) its opinion on the matters of statistical confidentiality related to enterprises. We shall examine in the second part of this paper the activities of the secrecy committee.

The regulation n° 1588/90 of the Council of June 11th, 1990 related to the transmission to the Statistical office of European Communities of statistical information covered by the secrecy, combined to secondary acts of Community law providing for compulsory transmission to Eurostat of confidential data, can also be considered as a third exception case to French law concerning statistical confidentiality.

1.7. Influence of international law on statistical confidentiality

In the present state, there does not exist an explicit Community definition of statistical confidentiality. As a matter of fact, the regulation of the Council of June 11th, 1990 stated that confidential statistical data are those which are declared such by the Member States in accordance with legislations or national practices concerning statistical confidentiality. This situation has changed with the adoption of the regulation of the Council of February 17th, 1997 related to the action of the Community in the domain of statistics. This act, refers on the one hand to the definition of statistical confidentiality adopted by the Economic Commission for Europe of United Nations on April 15th, 1992 in a resolution about fundamental principles of official statistics and on the other hand devotes a whole chapter to the definition of statistical confidentiality, to the role of the European Committee of Statistical Confidentiality and to related questions. In this frame dispensations applicable to statistical confidentiality at the Community scale will possibly be examined.

Moreover, concerning juridical protection of individual data, are in force :

the convention n° 108 of January 28th, 1981 of the European Council for the protection of individuals concerning the informatic processing of data of personal character

the recommendation n° R(83)10 adopted on September 23rd, 1983 by the Ministry Committee of the Council of Europe related to the protection of data of personal character used for purposes of scientific research and for statistics in this application text to a specific domain of convention n° 108 appears for the first time the idea that it is advisable to relativize, taking account of the reasonable character of means used, the notion of indirectly nominal data]

- the directive n° 95/46/CE of European Parliament and of the Council of October 24th, 1995 related to protection of individuals concerning the processing of data with personal character and concerning free circulation of these data.

The Member States have a three years period from July 24th, 1995 to transpose in their internal law the arrangements (of very general application) of the October 24th, 1995 directive which provides for several possibilities of dispensation in consideration of historical, statistical and scientific purposes.

The law of statistical confidentiality is therefore affected by the arrangements of the directive, the draft regulation of which will be the action of the Community of which the domain of statistics will be obliged to take into account.

On a higher level, the project of treaty of Amsterdam contains two articles (Art. 213 A and 213 B) introducing the principles relative to statistical activity and protection of personal data in the treaty of Rome.

2 - The committee of statistical confidentiality concerning enterprises

2.1. Setting up

The French committee of statistical confidentiality concerning enterprises established by the July 17th, 1984 decree to study the application problems to data related to enterprises of the rules of statistical confidentiality the principle of which is set by the law of June 7th, 1951, comprises 11 members.

The chairman is a member of the State council, the highest administrative jurisdiction of France, which guarantees the juridical lawfulness of the deliberations of the committee.

Moreover for each problem studied, the committee is composed of :
from representatives of administration, namely :

- a representative of the national institute of statistics
- a representative of the Ministry of Justice
- a representative of the Minister concerned by the problem studied
- a representative of the concerned statistical service
- four representatives of the enterprises :
 - of which one representing specifically the enterprises concerned by the studied problem
- a representative of the wage earning trade unions
- a representative of the regional and local users of statistical information.

The committee holds, as a matter of fact, three meetings a year ; the necessary quorum to validate a deliberation of the committee is six present members.

In case of the chairman being prevented from coming, the meeting can be held under the chairmanship of the representative of the Minister of Justice.

A decree of october 10th, 1997 introduces 3 new members representing the National Assembly, the Senate and the Economic and Social Council, enforcing the status of the committee.

2.2. Jurisprudence for aggregated data

Concerning statistical confidentiality for aggregated data related to enterprises, the committee of statistical confidentiality applies the jurisprudence resulting from a decision of the general director of INSEE (french national institute of statistics), taken after the adoption on June 6th, 1980 by the CNIS (national council for statistical information) of an opinion concerning the conditions of publishing of statistical tables and relaxing the rules approved on July 7th, 1960. For a table to follow the rules of confidentiality, it is necessary that :

- (i) the minimum number of statistical units (enterprises, establishments, ...) appearing in each cell should not be lower than 3 ;
- (ii) no statistical unit should dominate a cell by bringing more than 85 % of the aggregate appearing in this cell

2.3 The SIRENE register

INSEE manages an interadministrative register of identification of enterprises and establishments. This register named SIRENE and managed by statisticians, identifies on the account of the whole french public sector any enterprise and any establishment (i.e. : place in which an enterprise carries on, permanently, its activity) having in France an economic activity. The identifiers delivered by SIRENE are of compulsory use for the whole french administration, and are notably used for the identification for VAT matters of the trade operators within the community. The regulation sets the contents of the administrative register, the individual data of which are made accessible to the public (notably by a videotex service, on line) which constitutes a dispensation to statistical confidentiality. These data, related to more than 3 000 000 enterprises and roughly 4 000 000 establishments are :

- identification data, notably :
 - address
 - name or corporate name
 - juridical category
- identification data, notably :
 - the activity carried on (by the enterprise or by the establishment) which is one of the items of the activities official classification
 - the bracket of manpower number

SIRENE has also statistical purposes (population for sampling statistical surveys to enterprises) and constitutes the application for France of the arrangements of the regulation of Council of July 22nd, 1993 instituting the coordination of development of enterprises registers used for statistical purposes.

2.4. Generalized access to some individual data stemming from statistical surveys

Considering the very strong request of information which expresses itself on general characteristics of enterprises, and taking into account the fact that each enterprise wishing that these data remain confidential may oppose to their publishing by notifying this request to the secretariat of the statistical confidentiality committee concerning the enterprises, the CNIS has put forward opinions favourable to publishing :

- permanently
 - the list of secondary activities of enterprises and establishments at the level of the activity official classification in a deliberation of June 6th, 1980 ;
- once a year, in a deliberation of July 3rd, 1986
 - of the global number of manpower of enterprises and establishments

- of the bracket of turnover
- of the importance category of the share of turnover made in export
- and of the indicator of a research activity.

On this occasion, it has been precised that the refusal of dissemination of individual data when it is notified by an enterprise, applies for the corresponding data of the previous years.

Moreover, following an opinion adopted on June 21st, 1989 by the confidentiality committee, the general director of INSEE has allowed the use of the enterprise annual survey [statistical structure survey to enterprises] for the updating of the main activity code of SIRENE;

In concrete terms, these decisions have been taken into account for a widening of the economic nature variables in SIRENE.

2.5. Individual decisions of dispensation to statistical confidentiality (not permanent)

From 1984 to 1997 the committee of statistical confidentiality concerning enterprise has met 35 times. It has examined 285 cases of access request to individual data concerning 606 surveys (as a matter of fact, an important fraction of the requests concerns several surveys) and has given a favourable opinion in 493 cases. This success rate of the requests (81 %) must be assessed taking into account the screening done by the secretariat of the committee which discourages the applicants, the case of which is obviously unacceptable.

Table 1 gives the distribution of the origin of applicants. One can notice that research (if one defines it as comprising the university researchers) does not reach (nearly) the half of the total. It is advisable to take into account the fact that researchers who request access to data covered by statistical confidentiality often work in close collaboration with public statistical services ; on the other hand administrations and State bodies (which represent 23 % of the applicants, if they are not officially research bodies, more often request data for purposes of economic or administrative studies the aims of which are not far from research. Otherwise, some applicants are inhibited to confidentiality committee (notably because the committee refuses, except in the case of permanent accreditations to give access to surveys not yet realized). In fact the 285 files correspond only to 200 different applicants.

So EUROSTAT (which must ask for the opinion of the french committee of statistical confidentiality when it seeks a voluntary transmission [i.e. not made compulsory by a regulation of the community] of individual data) has lodged 4 files. The committee has also given a favourable opinion to a data transmission to a foreign country, in favour of the MERIT research laboratory of Maastricht university in Netherlands, and also in favour of the Ministry of Transportation of the United Kingdom of Great Britain and Northern Ireland and recently in favour of the CORNELL university in the United States of America.

2.6. Permanent decisions of dispensation to statistical confidentiality

The principle of coordination is one of the three which appear in the title of the law of 1951. It means that one must do his best not to collect several times the same data in different surveys made by public different survey services. In application of this principle, it is advisable to facilitate transmission of statistical data between public survey services when this is necessary. This the confidentiality committee has given a favourable opinion to some public survey services for permanent accreditations to the access of data collected by other survey services. These deaccreditations cover 58 surveys, and have been decided for the first meeting of the confidentiality committee, on March 29th, 1985.

The Head of Division
Juridical Environment of Statistics

G. LANG

Annexe : - Table I (1 page)

- Annex : list of the relevant texts regarding ethics and deontology concerning statistics and related studies (4 pages).

TABLE I

THE ORIGIN OF REQUEST

APPLICANTS	REQUEST	
	Number	Percentage
Administrations and States bodies (except education and research)	61	23
Universities	136	52
Researchers (of which CNRS)		
Chamber of commerce and industry employers organization	31	12
EUROSTAT	4	2
Others	32	11
TOTAL	264	100

ANNEX

LIST OF THE RELEVANT TEXTS REGARDING ETHICS AND DEONTOLOGY

CONCERNING STATISTICS AND RELATED STUDIES

- A - World-wide level
- A1 - Private and public statistics
- A.1.1. - Declaration of ISI (International Statistical Institute) about Professional Ethics, adopted on the occasion of the celebration of the centenary of the Institute, by the General Assembly of ISI, August, 21st 1985.
- A.1.2. - International Statistical Institute Declaration on Professional Ethics. Linguistic version in English of A.1.1. published by International Statistical Review (1986) 54, 2, p. 227-242.
- A2 - Official statistics
- A.2.1. - Resolution about the fundamental principles of official statistics adopted on April, 14th 1994 by the Statistical Commission of the Economic and Social Council of the United Nations.
(Identical text to B.2.1 that it takes up again)
- A3 - Private statistics
- A.3.1. - International code of loyal practice regarding market and opinion research adopted in June 1997 by the Council of the International Chamber of Commerce.
(Identical text to B.3.1.)
- B - European level
- B1 - Public and private statistics
- B.1.1. - Agreement (n° 108) for the protection of the persons against the automated processing of data of a private nature, signed under the aegis of the Council of Europe in Strasbourg, January, 28th 1981.
- B.1.2. - Recommendation n° R (83) 10 adopted on September, 23rd 1983 by the committee of the ministers of the Council of Europe related to the protection of data of a private nature used for the purposes of scientific research and statistics.
- B.1.3. - Recommendation n° R (97) 18 adopted on September, 30th 1997 by the committee of ministers of the Council of Europe concerning the protection of data of a private nature collected and processed for statistical purposes.
- B.1.4. - [Amsterdam draft treaty : articles 285 and 286 of the renumbered Rome treaty].
- B.1.5. - Directive of the European Parliament and of the Council of October, 24th 1995 related to the protection of individuals against the processing of data of a private nature and the free circulation of these data.
- B2 - Official statistics
- B.2.1. - Fundamental principles of official statistics in the region of the European Economic Commission adopted at the 47th session of the Economic Commission of the United Nations for Europe, in "Palais des Nations" in Geneva, April, 15th 1992.
(Identical text to A.2.1.)
- B.2.2. - Regulation of the Council of February, 17th 1997 about the community statistics.
- B.2.3. - Decision of the Commission of April, 21st 1997 concerning the role of Eurostat in the production of community statistics.
- B.2.4. - Regulation of the Council of June, 11th 1990 modified related to the transmission to the statistical office of European Communities of confidential statistical information.

- B3 - Private statistics
- B.3.1. - International code of loyal practice in the matter of opinion and marketing researches, adopted in July 1997 by the Council of ESOMAR (European Society for Opinion and Marketing Research).
(Identical text to A.3.1.)
- B.3.2. - International code of loyal practice in the matter of publishing the results of polls and directives for the interpretation of the code, adopted in January 1986 by the council of ESOMAR.
- B.3.3. - Directive to maintain the Distinctions between Marketing studies and Direct Marketing adopted in 1997 by the council of ESOMAR and the Council of the International Chamber of Commerce.
- B.3.4. - Code of practice for the activities of organization advising of FEACO (European Federation of the Associations of Organization Advising).

- C - National level
- C1 - Public and private statistics
- C.1.1. - Act n° 78-17 of January, 6th 1978 modified related to data processing, data files and individual liberties.
- C.1.2. - Decree n° 78-774 of July, 17th 1978 modified implementing Act n° 78-17 of January, 6th 1978 modified related to data processing, data files and individual liberties.
- C.1.3. - Penal code - Section 4 of chapter VI of title II of book II ("About the infringement of confidentiality")
- C.1.4. - Statistical code of practice of ASTEC (Association of the Statistician Economists alumni of ENSAE) February 1986.
(Identical text to C.2.9 that it taxes up again)
- C2 - Public statistics
- C.2.1. - Act n° 51-711 of June 7th 1951 modified about the obligation, the coordination and confidentiality in the matter of statistics.
- C.2.2. - Decree n° 84-628 of July 17th 1984 modified setting the powers, membership and operation of CNIS and implementing the Act n° 51-711 of June, 7th 1951 modified about the obligation, the coordination and confidentiality in the matter of statistics.
- C.2.3. - Act n° 78-753 of July, 17th 1978 implementing various measures of improvement of the relations between administration and the general public.
(Title I : About the liberty of access to administrative documents).
- C.2.4. - Act n° 79-18 of January, 3rd 1979 about archives.
- C.2.5. - General code of State and local communities civil servants (articles 26 and 27 about the obligations of civil servants : professional secrecy, professional discretion and information requests of general public).
- C.2.6. - Code of criminal law procedure (articles 40, 97, 99, 768, 768-1, 773 and 777-3)
- C.2.7. - General taxes code (articles 83 et 84 of the book of the tax procedures about the communication right).
- C.2.8. - Customs code (article 64A about the communication right).
- C.2.9. - Code of statistical practice of AIS (Association of the "Administrateurs" of INSEE) 1985.
(Text taken up again by C.1.4.)
- C3 - Private statistics
- C.3.1. - Act n° 77-708 of July, 19th 1977 related to the publication and the dissemination of certain polls.
- C.3.2. - Decree n° 78-79 of January, 25th 1978 related to the publication and dissemination of certain polls (membership and powers of the polls commission).
- C.3.3. - Decree n° 80-351 of May, 16th 1980 related to the publication and dissemination of certain polls (quality of polls).
- C.3.4. - Code of practice of SYNTEC CONSEIL
(Employers federation of Advising societies).
- C.3.5. - Code of loyal practice of SYNTEC/UDA (Union of advertisers) about panels and repetitive studies.
- C.3.6. - Recommendations of BVP (Office of Verification of Advertising) about the processing of polls for advertising purposes.