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## **Legal aspects of transnational access of French confidential data**

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# Legal aspects of transnational access of French confidential data

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## 1 How to access confidential data in France ?

In France, confidential statistical data are protected by law and any transmission outside the collecting institute is, at least theoretically, punished by a fine and a jail sentence. This sanction concerns every transmission included the one to statisticians and researchers, it could lead to an important increase of the burden on respondents.

A general derogation exists as “business” data could be transmitted without any restriction 25 years after data collection and “household” data after 75 years.

A more convenient derogation exists for statisticians and researchers : data could be transmitted to them as soon as the data is collected after an administrative procedure including an opinion of a specific committee, an agreement of the institution having collected the data and a decision from National Archives Administration. This procedure is going to be detailed below. Of course, people accessing confidential are restricted to the same legal dispositions as the statisticians collecting data.

### 1.1 The French Statistical Confidential Committee (SCC)

This committee is chaired by a judge and includes representatives of businesses, of trade unions, of researchers and of the institution having collecting data.

For every request of access, a form is filled and the projected use of confidential is presented<sup>1</sup> and the opinion of the committee, always reached by consensus, is delivered in most of the cases during the session.

The opinion takes into account some legal dispositions (use for public statistics or for scientific or historical research) and soft law (confidential data are needed for the research project and they are going to be only used in a public interest project : a specific question in the form concerns dissemination of data).

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<sup>1</sup> Everything is to be presented in French, but foreign researchers could be helped and represented during the meeting.

## **1.2 The agreement of the institution having collected the data**

In 27 years of existence of the SCC, the institution having collected the data has always followed the opinion of the SCC.

## **1.3 The decision by the National Archives Administration**

In France, statistical data are considered as national archives and the law requires a decision of the administration running national archives to transmit the confidential data. Its decision has always followed the opinion of the SCC.

## **1.4 What's next?**

“Household” data could only be accessed through Genes safe centre and some more formalities are needed (capture of a fingertip). “Business” data will be accessed through the safe centre in 2012.

## **2 Transnational access**

As confidential data protection is based on penal law, transnational access could lead to difficult problems in case of confidentiality breach outside France and more specifically outside Europe.

Although French penal law could be competent in case of a breach outside France, the effectiveness of a sanction could be close to null.

So French SCC has developed a specific policy for foreign access.

### **2.1 No French confidential data outside Europe**

As a policy, the SCC always gave a negative opinion (followed in the procedure) when confidential data were to be transmitted outside Europe (one exception has occurred when A French researcher asked for confidential data in the US). More recently, access was given to an American researcher provided he works in France.

The committee also raised the question of the possibility of a transmission to investigation agencies in the US.

### **2.2 Inside Europe, a condition linked to reciprocity**

Inside Europe, application of French penal law is less complicated and there's no general interdiction by the SCC.

But, another condition of reciprocity is raised by the SCC : a foreign researcher could access French confidential if a French researcher could have access to the same data in the foreign country.

This policy is clearly used to help French researchers to use foreign confidential data.

### **3 A specific case : access to confidential data held by Eurostat**

When a researcher requests access to confidential data held by Eurostat, Eurostat needs the agreement of the Member State which has transmitted the data.

France has decided that the opinion of the SCC is to be given before.

An agreement has been reached between Eurostat and the French SCC : the French recognized the accreditation work done by Eurostat and allowed the request to follow a fast procedure, not requiring the presence of researcher during the session of the committee. Procedure is therefore quickened and the researcher could have accessed very quickly to French data.

### **References**

Insee – Guide to statistical confidentiality - <http://www.insee.fr/en/insee-statistique-publique/statistique-publique/guide-secret-18-10-2010.pdf>