

GUIDE TO STATISTICAL CONFIDENTIALITY

Statistical confidentiality is a particular form of **professional confidentiality** that applies to public-sector statisticians.

The general principle is to provide people who supply to the government or public-service officials information used to produce statistics with the assurance that this information **will not be used in a way that might harm them**.

Statistical confidentiality prevents the governmental or public-service depository of information:

- from communicating to third parties individual information collected in a statistical survey;
- from divulging information that has been transmitted to it by third parties for the sole purpose of producing statistics.

This thereby ensures:

- that the **confidentiality of the personal and family life of** natural persons is guaranteed;
- that for companies **commercial confidentiality** is respected: that the information transmitted will not be made available to their competitors.

Statistical confidentiality provisions exist in various different forms in every country in the world.

In France, this confidentiality is guaranteed by two groups of legal texts, one at European level, the other at national level.

At national level, it is the amended [law n° 51-711 of 7 June 1951](#) on legal obligation, coordination and confidentiality in the field of statistics that defines statistical confidentiality, its limits and the conditions under which it is applied.

The aforementioned law pertains to legal obligation and confidentiality in the field of statistics. This has led some people to believe that confidentiality is what is given in return for the legal obligations under the law. This is not at all the case. The public statistics service carries out a number of surveys which are not compulsory in nature: the rules on statistical confidentiality apply both to these surveys as well as to the compulsory surveys.

At European level, the confidentiality of statistical information is enshrined in [article 285](#) of the treaty. Statistical confidentiality is covered in Chapter V of [Regulation 223/2009](#) of the European Parliament and of the Council of 11 March 2009 and in implementing regulation concerning access to confidential data for scientific purposes ([Commission Regulation 831/2002](#) of 17 May 2002). This latter regulation is currently being revised.

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Practical rules for ensuring compliance with the principle of statistical confidentiality

How can it be determined whether making information available is in compliance with statistical confidentiality rules?

First of all a distinction must be drawn between information collected by means of statistical surveys and information which has been transmitted by third parties to the public statistics service for the purpose of producing statistics (administrative data).

Statistical surveys are those which have received the approval provided for in article 2 of [law n 51-711 of 7 June 1951](#) on legal obligation, coordination and confidentiality in the field of statistics and which appear in the list of public statistics surveys published each year in the *Journal Officiel*. For the year 2010, two rulings have been published, one for national surveys and the other for regional surveys. Further rulings may complete this list in the course of the year.

A. Information drawn from statistical surveys

Confidentiality must be respected when producing tables of aggregated data and files containing individual data.

1. Aggregated data tables

- a) For tables providing aggregated data on **businesses**, the rule is as follows:
 - no cell in the table should pertain to fewer than three units (decision of 13 June 1980 of the Director General of Insee);
 - no cell in a table should contain data, over 85% of which relates to one company (practical dissemination rules drawn up on 7 July 1960 by the Statistical Surveys Coordination Committee (Cocoes), a distant ancestor of the National Council for Statistical Information (Cnis).
- b) For tables providing aggregated data on **households**, the only statistical confidentiality rule that applies is that the direct or indirect identification of individuals is forbidden. In practice, it is considered that statistical confidentiality has been complied with when knowledge of a characteristic of an individual cannot lead to knowledge of another characteristic with which it is crossed in a table. For example, if a table provides a breakdown by age and marital status and older people (for example, 50 to 59 years old) all have the same marital status (for example, divorced), statistical confidentiality has not been complied with in this table and the table therefore cannot be disseminated. If it is also known that someone is aged between 50 and 59, the table informs us that this person is divorced even if there are several people in the box corresponding to the characteristics « 50 to 59 » and « divorced ». It should be noted that in the past strict checks on compliance with this rule have not always been carried out.

Specific dissemination rules for the population census have been introduced in the light of the specific nature of this survey, especially due to its exhaustive nature in small villages. These dissemination rules are contained in the [decree of 19 July 2007](#) (text in French) concerning the dissemination of the results of the population census. The plan for dissemination of the results of the population census is accessible on the INSEE website.

2. Individual data files

- a) It is generally considered that it is not possible to provide **individual business data** and at the same time preserve strict anonymity, unless a few variables often regarded as essential for analysing such files are deleted from said files: economic activity, location (even approximate), size indicator.

This is why there are no individual files on businesses that can be downloaded over the internet.

However, in order to satisfy the need for occasional information on businesses, a [Statistical Confidentiality Committee](#) was created under a law enacted in 1984. This committee may propose individual or collective exemptions from the statistical confidentiality rules.

Economic and financial data collected from statistical surveys can be freely accessed after a period of 25 years following the date the survey was carried out.

b) **Household surveys**¹ carried out by Insee may give rise to two types of individual data files:

- on the one hand, files available to the general public on the Insee website. These files are designed in such a way as to make it impossible to identify an individual. To ensure this, a certain number of variables are taken out of the original file: municipality of residence, detailed description of profession, as well as other variables specific to the survey that would make it possible to identify a person (for example, the SIRET identification number of the employer establishment). In addition, some variables that do not allow an individual to be identified are also taken out of the files intended for the general public in order to avoid any unprofessional use of the statistics: for example, the *département* in which the person resides, if the survey sample was not designed to provide for representativity at this level of detail.
- on the other hand, so-called « production and research » files (PRF). These files are also completely anonymised insofar as they do not allow for the identification of any individual in the survey. They nonetheless cater for requests made by researchers who wish to have more detailed information than that contained in the file intended for the general public. The information which had been taken out of the file intended for the general public in order to avoid any unprofessional use of the statistics is reinserted into the PRFs. These files are made available to researchers via the Maurice Halbwachs Centre, which is part of the Quetelet network. The Centre checks the status of the researcher who wishes to access the PRF and ensures that he will be using the information communicated to him for professional purposes. The PRFs are also made available to the Ministerial Statistical Services (MSS) that request them. Other bodies may also have access to these “production and research” files, providing they sign an agreement with INSEE.

It is also possible to gain access to non-anonymised individual data from household surveys after receiving the opinion of the Statistical Confidentiality Committee, the agreement of the authority in charge of the data and subsequent to a decision of the Data Archives administration. In this case the procedure is the same as that employed for the communication of information relating to businesses. However, if the information relates to facts and behaviour of a private nature, the exemption from statistical confidentiality rules can only be granted for the purposes of public statistics or scientific or historical research.

It should be noted that this competence of the Statistical Confidentiality Committee was only enacted under law [2008-696 of 15 July 2008](#) (text in French) concerning Data Archives. Unlike the competencies of the Statistical Confidentiality Committee dealing with businesses (which date back to 1984), dealing with statistical confidentiality exemptions for household data is a very recent development.

¹ except for the censuses and annual census surveys which are subject to special provisions

In its meeting of 6 October 2009, INSEE informed the Statistical Confidentiality Committee of the conditions that it would set in order to give its agreement² for the communication of directly or indirectly nominative individual data on households.

These conditions are as follows:

- For the Ministerial Statistical Services (MSS), the agreement for the communication of files with indirectly identifiable data will be given subject to the MSS providing specific guarantees regarding control over access to these files, and provided that the measures taken to ensure full impermeability between the files of the MSS and those accessible by the rest of the Ministry are deemed sufficient. A written attestation of compliance with these conditions is required of any MSS wishing to obtain access to these data.
- For other requesters, access to indirectly nominative data is carried out via a secure remote access centre (SRAC)³. It comprises a server located at Insee on which complete individual results for a number of surveys have been placed. The direct identifiers of these individuals (name, exact address, identification number) do not appear in these files. However, these files can be used to identify certain individuals indirectly by cross-checking several variables. This server is only accessible from remote access stations installed in research bodies or universities. Use of these stations is protected (currently by a password, a personalised access card and fingerprint recognition) so as to limit access to expressly designated persons only. These persons have all signed a form whereby they undertake to comply with the security rules and acknowledge that they have read the texts governing statistical confidentiality and are aware of the penalties for non-compliance.
- Matching is possible at the secure access centre. Matches between two confidential files are carried out by INSEE staff who are authorized and expressly designated to conduct this task, and the resultant file is made available at the secure access centre. The same procedure can be used if one of the files to be matched is contributed by the researcher himself: the file resulting from the matching will not be sent to him, but he will be able to access it at the secure access centre.
- The secure access centre may also be used by researchers to access indirectly identifiable administrative data transferred to INSEE or to a Ministerial Statistical Service under Article 7bis of the Law of 1951 and under the conditions stipulated on Article 7ter of this same law.
- The financial conditions for access to the secure access centre will be redefined presently. The principle will involve the invoicing of all the costs generated by the provision of the information.
- Access to directly identifiable data (with the surname, forename and possibly the social security number) will be examined on a case-by-case basis by the INSEE management board. Agreement for this access should only be given by INSEE for the constitution of a sample with a view to conducting a survey that has received the approval of the Minister as stipulated by article 2 of the Law of 1951.

Personal and family data, and more generally data pertaining to facts and behaviour of a private nature, can be freely accessed after a period of seventy-five years, or twenty-five years after the person's death, whichever comes first.

c) **environmental data**

Environmental data has been dealt with specifically as regards statistical confidentiality since France transposed into national law ([law of 26 October 2005](#) (text in French)) a European directive ([directive 2003/4/EC](#) of the European Parliament and the Council of

² It should be remembered that this agreement is required for the Data Archives administration to be able to issue the communication authorisation (article L.213-3 of the *Code du Patrimoine* (French Heritage Code))

³ examples of secure access centres already exist in some countries: either they use remote access technique, as in France, or physical and direct access via servers scattered across the country (Canada)

28 January 2003) on public access to environmental information, implementing the Århus Convention.

This law amended a number of provisions of the *Code de l'environnement* (Environmental code):

- [article L124-2](#), which gives a particularly broad definition of environmental information, using (often word-for-word) the definition given in the European directive.
- [article L124-3](#) lays down the general principle of access to environmental information held by some bodies (State, regional authorities, public bodies and legal persons providing a public environmental service). No justification for the request is needed and the requester need not have any reason for accessing the information. The mere fact that the information exists makes it available to everyone. The legislator, however, has set down a limit for persons providing a public service mission in the field of the environment: only information concerning this mission can be communicated.
- [article L124-4](#), however, foresees cases where a public authority may reject a request. These cases include information protected by statistical confidentiality. This, however, is only a possibility and the authority may, if it so wishes, communicate the information even if it is protected by statistical confidentiality. In this respect, the article in question does in fact limit the extent of the confidentiality because it allows a public authority to refrain legally from applying the rules. In addition, this article stipulates that the administration must assess the meaningfulness of communicating the information, which is tantamount to saying that it must weigh the pros and cons of each communication. If the request is rejected, the requester must be notified of the grounds for the decision within one month, which may be extended to two months. It is on the basis of these grounds for the decision that the requester may lodge an appeal with the *Commission d'accès aux documents administratifs* (Commission responsible for access to administrative documents), and then with the administrative courts.
- paragraph II of [article L124-5](#) severely limits the number of possible grounds for refusing to communicate information relating to the release of substances into the environment because the public authorities can only refuse to authorise communication in very specific and uncommon statistical cases. Statistical confidentiality cannot be used as grounds to refuse to communicate information on the release of substances into the environment. This category has not yet been precisely defined; it includes at least information on all substances released into the environment (waste, retreated or waste water, releases from nuclear power stations, gas emissions, consequences of the storage of liquid pig manure, etc).

B. Information drawn from administrative sources

Information transmitted to Insee or to the ministerial statistical services for the purposes of producing statistics (outside the framework of actual statistical surveys) is also covered by statistical confidentiality. This is explicitly foreseen in article 7bis of [law n° 51-711 of 7 June 1951](#) on legal obligation, coordination and confidentiality in the field of statistics.

This means that depositaries must not communicate information allowing identification of individuals to anyone.

However, the confidentiality rules applicable to these files differ from one source to the next and are specific to each individual source.

Some information providers adopt rules that go beyond the requirements of statistical confidentiality rules. These rules must be complied with in all publications.



For instance, in the case of **dissemination of tables** based on tax information, the rule is that no cell should refer to fewer than eleven individuals.

For tables based on annual social data declarations (DADS), no cell should refer to fewer than five individuals.

For all other sources one must find out what dissemination rules have been set by the body that has communicated the information. In general, these rules are laid down in the relevant data transmission agreement.

For **individual data files**, the rule is obviously that their dissemination by Insee or the SSMs is in principle forbidden.

However, flexibility was introduced into this principle through order [n° 2004-280 of 25 March 2004](#) (text in French) concerning simplifications in the field of statistical surveys. It enables researchers to access individual data from administrative files according to procedures which are comparable to those allowing access to individual data from statistical surveys. The opinion of the administration or the legal person that collected the relevant data may be sought before the data is communicated.

C. Mixed sources

Mixed sources means:

- sources stemming from combinations of statistical surveys and administrative data
- sources containing both information of an economic and financial nature (businesses) and information relating to facts and behaviour of a private nature (households)

1. Files combining statistical and administrative data

The approach to be adopted when dealing with such sources is in principle very simple: the rules that apply are both those that apply to statistical surveys and those that apply to administrative files.

These sources include the survey of tax and social revenues which brings together the results of the labour force survey, tax data and data provided by the Benefit Offices, or the Esane (⁴) and Fusain (⁵) surveys which are based to a large extent on a combination of statistical surveys and tax data.

It should be noted that the principle of dissemination of individual tax data is forbidden under the register of tax procedures ([article L.103](#) (text in French)). However, there are several exceptions to this principle, most notably in the field of statistics. [Article L.135 D](#) (text in French) of the register of tax procedures provides the possibility (but not the obligation) for tax and customs officers to communicate:

- Any information to the INSEE and Ministerial Statistical Services, for the sole purposes of drawing up statistics;
- Some information about business data (sometimes known as the end-of-year tax forms) for the purposes of scientific research, under the conditions of the Law of 1951, that is, after an opinion has been sought from the Statistical Confidentiality Committee;
- This same information, for the sole purposes of conducting economic surveys, to the officials of State departments responsible for performing economic surveys. A ruling of 7 July 2009 specifies that these departments are the *Sous-direction de la prospective, des études économiques et de l'évaluation* (Forward Studies, Economic Studies and Evaluation sub-directorate) of the *Direction générale de la compétitivité, de l'industrie et des services* (Competitiveness, Industry and Services General Directorate), and the *Service de l'économie, de l'évaluation et de l'intégration du développement durable* (Economy, Evaluation and Integration of Sustainable Development department) of the *Commissariat général au développement durable* (Sustainable Development General Commissariat).

⁴ Compiling of Annual Business Statistics

⁵ Merging of Annual Statistics from Industry



2. Files combining business data and household data

These files may come from statistical surveys (wage structure survey, COI⁶ survey...) or administrative sources (annual social data declaration).

The recent Data Archives law, which broadens the remit of the Statistical Confidentiality Committee, has considerably simplified the procedures for dealing with such files.

A single request to be exempted from statistical confidentiality can be made to this committee. The conditions under which data can be accessed are those already mentioned for business data, on the one hand, and household data on the other.

⁶ Organisational Change and ICT Use survey



Comments on the amended [law n°51-711 of 7 June 1951](#) on legal obligation, coordination and confidentiality in the field of statistics

Four articles in this law deal with the issue of statistical confidentiality:

- [article 6](#) which defines the general scope of statistical confidentiality
- [article 6^{bis}](#) which sets up the Statistical Confidentiality Committee
- [article 7^{bis}](#) which covers information transmitted to Insee or an MSS
- [article 7^{ter}](#) which deals with the communication of certain individual data for the purposes of scientific research

Comments on article 6 of the 1951 law

Article 6

Without prejudice to the provisions of [articles 40, 56, 76, 97 et 99](#) of the *Code de procédure pénale* (Code of criminal procedure) and those of article L.213-3 of the *Code du patrimoine* (Heritage code), [individual information](#) in questionnaires bearing the visa provided for under article 2 of this law which [pertain to private and family life and, more generally speaking, to facts and behaviour of a private nature](#) cannot, except subsequent to a decision of the Data Archives administration taken after seeking the opinion of the Statistical Confidentiality Committee in relation to a request made for the purposes of public statistics or scientific or historical research, be [communicated](#) by the depository until expiry of a [period](#) of seventy-five years after the date when the survey was carried out or twenty-five years after the death of the person concerned, whichever occurs first.

Without prejudice to the provisions of [articles 40, 56, 76, 97 et 99](#) of the *Code de procédure pénale* (Code of criminal procedure) and those of article L.213-3 of the *Code du patrimoine* (Heritage code), [individual information of an economic or financial nature](#) in questionnaires bearing the approval provided for under article 2 of this law cannot, except subsequent to a decision of the Data Archives administration taken after seeking the opinion of the Statistical Confidentiality Committee, be [communicated](#) by the depository until expiry of a [period](#) of twenty-five years after the date when the census or survey was carried out.

This data may not under any circumstances be used for the purposes of [tax inspections or economic penalties](#). Pursuant to the provisions of article [L. 84](#) (text in French) of the *Livre des procédures fiscales* (Register of tax procedures) and article [L. 64 A](#) (text in French) of the *Code des douanes* (Customs code), administrations that are depositories of information of this nature are not bound by the [obligations relating to the right of information](#).

Public servants and staff working for bodies acting as agents for the survey-taking pursuant to the provisions of article 4 are bound by professional confidentiality and subject to the [penalties](#) foreseen in [articles 226-13 and 226-14](#) of the *Code pénal* (Criminal code).

Censuses and statistical surveys carried out in accordance with the provisions of this law have the status of public Data Archives.

1. This article makes a distinction between **two types of individual information** from survey questionnaires: information pertaining to « *private and family life and, more generally speaking, to facts and behaviour of a private nature* » or information « *of an economic or financial nature* »

Three comments can be made in this regard:

- a) there is no precise definition of these two types of individual information. In particular, one might wonder about the wording of the first type of information: c) Wouldn't a reference to « *facts and behaviour of a private nature* » have been sufficient? Why add the reference to « *private and family life* »?
- b) this distinction is usually interpreted as follows: on the one hand, there is information collected from household surveys and, on the other hand, there is information collected from business surveys, even though this interpretation is not completely satisfactory. Although it is true that business surveys rarely collect information about « *facts and behaviour of a private nature* », it is not uncommon for household surveys to contain information that is mainly « *of an economic or financial nature* ». Examples of this include the survey of household assets and the survey of family budgets.
- c) the law only legislates for these two types of information. It is sometimes difficult to « classify » the information collected in one of these two categories. But this is what has to be done. For it is considered that **all statistical information must be regarded as belonging to one of these two categories**. There is thus no possibility for information collected via a statistical survey not to be covered by confidentiality rules.

2. Timeframes

- a) For individual information pertaining to « *facts and behaviour of a private nature* », the period of time during which communication is not permitted is seventy-five years or twenty-five years after the death of the person concerned, whichever comes first.
 - b) It should be noted that article [L.213-2](#) (text in French) of the *Code du patrimoine* (Heritage code) sets at one hundred years (or twenty-five years after the death of the person concerned, whichever comes first) the period during which this information cannot be communicated when the information refers to minors. Thus, for people who are still alive or who died less than twenty-five years ago, the information in the censuses of 1921, 1926 and 1931 can be communicated only if it relates to people who were adults at that time, i.e. born respectively before 1900, 1905 or 1910.
 - c) For individual information of an *economic or financial nature*, the applicable time period is twenty-five years.
3. Except subsequent to a decision of the Data Archives administration, the law does permit the communication of individual information from survey questionnaires to anyone, be it another Ministerial Statistical Service, administrative body, foreign national statistical institute, or even Eurostat.

It is only when a **European regulation** (or a text of a similar status) provides for the transmission of individual data to Eurostat (or to another body) that this transmission becomes legal: this is because European regulations are directly applicable (unlike directives, which have to be transposed into national law) and take precedence over any possible conflicting provisions in French law. When a European regulation allows the possibility of transmission of these data by Eurostat to third parties (this is generally the case for transmissions to researchers) and conditions this regulation upon agreement by the Member State, the provisions of the French law (notably a review by the Statistical Confidentiality Committee) apply.

4. Articles 40, 56, 76, 97 and 99 of the *Code de procédure pénale* (code of criminal procedure) provide for exceptions to the absolute nature of statistical confidentiality.
- a) [article 40](#) obliges any employee of a statistical service who, in the exercise of his functions, acquires knowledge of a crime or misdemeanour, to notify the public prosecutor immediately. In such an event he is not bound by statistical confidentiality rules. It should be noted that the application of this article can complicate the collection of statistical information within the framework of surveys on crime, violence, etc. Insee and Ministerial Statistical Services interviewers are actually subject to the provisions of this article. However, no penalty is foreseen in the event that an employee fails to notify the public prosecutor.
 - b) [article 56](#) authorises criminal investigation officers who have been issued with a warrant by an investigating judge to have access to all documents enabling them to obtain proof of the nature of a crime. If this were to happen (and it is a rather uncommon occurrence), a very specific procedure has to be set up. In such an event, it is necessary to get in touch immediately with the competent service in the DG (the « the legal statistical environment » division). Articles [76](#), [97](#) and [99](#) of the *Code de procédure pénale* (code of criminal procedure) specify some aspects of this procedure.
5. Tax inspections and economic penalties

The aforementioned exceptions, especially the authorisation to transfer information via the Statistical Confidentiality Committee, cannot under any circumstances be used for the purposes of tax inspections or economic penalties. This is one of the main criteria used by the Statistical Confidentiality Committee when forming its opinions.

The term « *economic penalties* » also covers the award of subsidies or benefits to businesses or individuals: in this case, the « *penalties* » target the economic operators who do not benefit from this...

6. Customs and tax authorities

[Article 83](#) (text in French) of the *Livre des procédures fiscales* (Register of tax procedures) imposes an obligation on all administrations to communicate to the tax services, at their request, any document in their possession without any possibility of refusing on grounds of professional confidentiality. The provision of the 1951 law, which is repeated in [article 84](#) (text in French) of the *Livre des procédures fiscales* (Register of tax procedures), is an exception to this rule and makes it possible to invoke statistical confidentiality grounds in response to such a request to communicate information.

Similarly, the *Code des douanes* (Customs code) imposes the same obligation on administrations vis-a-vis customs officers. The provision of the 1951 law, which is repeated in [article 64](#) (text in French) of the *Code des douanes* (Customs code), makes it possible to invoke statistical confidentiality grounds in response to such a request to communicate information.

7. Penalties

Heavy penalties are provided for in the event of a breach of statistical confidentiality. It should be noted that if a public servant divulges information covered by statistical confidentiality to a third party, and the latter disseminates this information widely, the article of the law provides for penalties only against the public servant who was the first to breach statistical confidentiality (other penalties can be imposed on the third party, but these are not stipulated in the 1951 law). The heavy nature of the penalties provided for under the law should be emphasised: a one year prison sentence and a 15 000 € fine.

Comments on article 6^{bis} of the 1951 law

Article 6^{bis}

Sets up a Statistical Confidentiality Committee. This committee has a mandate to adopt a position on any issue relating to statistical confidentiality. It gives its opinion on requests to communicate individual data collected pursuant to this law.

The committee is chaired by a member of the *Conseil d'État* (Council of State: the highest administrative Court), who is designated by the vice-president of the *Conseil d'État*. It includes representatives of the National Assembly and the Senate.

The composition and rules of procedure of the committee are established by a decree of the *Conseil d'État*.

The recipients of data communications subsequent to ministerial decisions taken after seeking the opinion of the Statistical Confidentiality Committee agree not to communicate this data to anyone. Any breach of the provisions of this paragraph is punished by the penalties laid down in [article 226-13](#) of the criminal code.

1. The Statistical Confidentiality Committee usually meets four times a year.

2. It has a very broad remit covering all statistical confidentiality issues.

However, its most common task is to give opinions on requests for individual data communications made by natural persons, who are usually introduced by a university laboratory or a recognised public body.

Its composition and operating methods are set by Decree n° 2009-318 of 20 March 2009 relating to the National Council for Statistical Information and the Statistical Confidentiality Committee. Chapter II, which concerns the Statistical Confidentiality Committee, is commented on below.

Comments on article 7^{bis} of the 1951 law

Article 7^{bis}

Subsequent to a request by the Minister of Economic Affairs, after seeking the opinion of the National Council for Statistical Information, and except as otherwise provided for, the information pertaining to natural persons, with the exception of data relating to their sex lives, and information pertaining to legal persons collected within the framework of its mission by an administration, a legal person governed by public law or a legal person governed by private law in charge of a public service, is transferred to the *Insee* (National Institute for Statistics and Economic Studies) or the Ministerial Statistical Services for the sole purpose of producing statistics.

Personal health data collected under the conditions set out in the previous paragraph can only be communicated, at the request of the Health minister, to the *Insee* (National Institute for Statistics and Economic Studies) or the Ministerial Statistical Services that are involved in defining, conducting and evaluating public health policy for the purpose of producing statistics on the state of health of the population, public health policies or components of health care and social protection systems dealing with disease amongst populations. Complementary surveys bearing the visa mentioned in article 2 can be carried out amongst samples of these populations.

The arrangements for communicating personal health data collected under the conditions set out in the previous paragraph must not make it possible to identify individuals.

There can only be an exemption from this last obligation when the conditions for compiling statistics set out in the second paragraph require that elements enabling direct or indirect identification of individuals be made available, especially for the purposes of establishing samples of persons and matching data from various sources pursuant to the provisions of law n° 78-17 of 6 January 1978 concerning electronic data processing, files and liberties.

Only the persons responsible for the operation, who have been designated for this task by the authorised legal person, can receive the personal health data which has been transmitted to the *Insee* (National Institute for Statistics and Economic Studies) or the Ministerial Statistical Services that are involved in defining, conducting and evaluating public health policy. After using this data, the elements that make it possible to identify the individuals must be destroyed.

Without prejudice to [article 777-3](#) of the *Code de procédure pénale* (Code of criminal procedure), the provisions of the previous paragraphs are applicable notwithstanding all other conflicting provisions relating to professional confidentiality.

The transfer of [personal data](#), as laid down in article 2 of law n° 78-17 of 6 January 1978 on electronic data processing, files and liberties, is subject to the provisions of said law; the regulatory act and, when the transfer involves two distinct legal persons, the agreements between the transferor and transferee of this information stipulate the transmission arrangements, the purpose for which the data is being used and the fate of the information after it has been used for the purpose of statistical processing.

Transfers of information pertaining to legal persons are authorised subsequent to a joint decision of the Minister of Economic Affairs and the other ministers concerned.

Without prejudice to the provisions of articles [40](#), [56](#), [76](#), [97](#) and [99](#) of the *Code de procédure pénale* (Code of criminal procedure), the information transmitted pursuant this article and with which it is possible to identify the natural and legal persons to which it relates cannot be communicated in any shape or form by the service receiving the information.

Employees of the *Insee* (National Institute for Statistics and Economic Studies) and the Ministerial Statistical Services are bound, as regards the data they take cognizance of pursuant to this article, by professional confidentiality and subject to the penalties laid down in [articles 226-13](#) of the *Code pénal* (Criminal code).

The transfer of [personal data](#), as laid down in article 2 of law n° 78-17 of 6 January 1978 on electronic data processing, files and liberties, is subject to the provisions of said law; the regulatory act and, when the transfer involves two distinct legal persons, the agreements between the transferor and transferee of this information stipulate the transmission arrangements, the purpose for which the data is being used and the fate of the information after it has been used for the purpose of statistical processing.

1. This article provides for **access by right** for Insee and the Ministerial Statistical Services (MSS) to all administrative data which is not protected by a law.

Up until 2004, the text of this article stated that Insee and the MSSs « were entitled » to have access to this data. This meant that the administrations that transmitted the information to them were not, in doing so, in breach of the law. But they were equally not in breach of the law if they did not transmit the data.

Since the [order of 25 March 2004](#) (text in French), the term used is « is transferred », which means that this transfer is automatic. Were an administration to refuse to make the transmission, it would be in breach of the law.

2. The transmission is carried out under the following provisos and conditions:

- the data can only be transferred for the exclusive purpose of producing statistics;
- the request must be made by the minister responsible for Insee (in practice, it is the director general of Insee who makes this request per pro.the minister);
- the National Council for Statistical Information (Cnis) must give its opinion: the thematic commissions are competent to issue this opinion; the text does not stipulate that this opinion has to be in conformity with the law;
- only a legislative text may prevent this transfer: this provision forbids, for example, the transfer of information that might undermine national security; this provision would also normally forbid the access to tax and customs information which is covered by confidentiality rules under the law; however, it can be transmitted to Insee and the MSSs insofar as article [L135D](#) (text in French) of the register of tax procedures provides for an exemption to confidentiality in their favour;
- data relating to the sex lives of individuals cannot under any circumstances be transferred;
- [health data](#) is covered by specific provisions (see below)
- the expression « is transferred » does not mean under any circumstances that the transfer is made free-of-charge.

3. When the transfer relates to personal data, the provisions of the law of 6 January 1978, known as the « Data processing and liberties » law, apply. The requisite formalities must be completed with the National Data Processing, Files and Individual Liberties Commission (Cnil). They must stipulate the transmission arrangements, the purpose for which the data is being used and the fate of the information after it has been used for the purpose of statistical data processing.

When the transfer relates to data concerning legal persons, the authorisation to transfer the information is granted subsequent to a joint decision of Insee and the minister concerned.

4. Data transmitted under these conditions to Insee and the MSSs is, from this moment onwards, covered by statistical confidentiality and cannot be communicated in any shape or form by the service receiving the information (Insee or MSSs).

Any breach of this confidentiality by employees of Insee and MSSs exposes them to the penalties laid down in [article 226-13](#) of the *Code pénal* (Criminal code): a one year prison sentence and a 15 000 € fine.

However, sometimes certain information transmitted under these conditions to Insee by a public body is partially public or can be disseminated to certain categories of requesters. As these bodies are not always sufficiently well equipped to respond to the requests, they can ask Insee or the MSSs that receive their data to communicate it on their behalf. This communication is covered by a tripartite agreement signed by the body in charge of the data, Insee or the MSS and the requester.

5. An exception to this non-communication can also be granted on the basis of a recommendation from the Statistical Confidentiality Committee (this case is foreseen under [article 7^{ter}](#) of the law of 7 June 1951).

6. Special provisions are foreseen for the communication of **health data**:

- the only services that can receive data are:



- Insee
- the MSSs that are involved in defining, conducting and evaluating public health policies
- this data can only be transferred with a view to compiling statistics on:
 - the state of health of the population,
 - public health policies,
 - components of health care and social protection systems dealing with disease amongst populations

Communicating this data must not make it possible to identify individuals, except when this is necessary in order to produce statistics, for example in order to construct samples of people to be interviewed. Only the persons responsible for the operation, who are designated by the director general of Insee or the head of the MSS concerned, are entitled to have access to personal data. After using this data, the elements that enable the individuals to be identified must be destroyed.

Professional confidentiality cannot be invoked as grounds for refusing to allow these data processing operations.

Comments on article 7^{ter} of the 1951 law

Article 7^{ter}

The plenary formation of the Statistical Confidentiality Committee is competent to issue, after seeking the opinion, if it so wishes, of the administration or legal person that collected the data concerned, recommendations relating to access for the purposes of scientific research to individual data transmitted to the *Insee* (National Institute for Statistics and Economic Studies) and the Ministerial Statistical Services pursuant to [article 7^{bis}](#) of this law.

1. Researchers are entitled to have access to certain administrative data concerning individuals covered by statistical confidentiality.
2. This possibility applies to information transferred to Insee or MSSs pursuant to the provisions of [article 7^{bis}](#) of the 1951 law.
3. In the event of a request to communicate such information:
 - the body which has provided Insee or an MSS with this data is usually consulted: the law stipulates that this opinion is optional, but in practice it is normal and customary to request it;
 - the Statistical Confidentiality Committee, meeting in its plenary formation, issues a recommendation on access to this data for researchers; to do this, it uses the same criteria as those it uses for the communication of individual information collected from statistical surveys; it also checks that the request to communicate the data is being made for the purposes of scientific research;
 - once the Statistical Confidentiality Committee has issued this recommendation, the Minister for Economic Affairs and the minister responsible for the service in charge of collecting the data concerned are called on to give their joint agreement to communicate the data, and then the authorisation is ultimately granted by the Data Archives administration.

The Statistical Confidentiality Committee

The Statistical Confidentiality Committee is founded by article 6^{bis} of the Law of 1951.

Its composition and operating methods are specified in Chapter II of Decree 2009-318 of 20 March 2009 relating to the *Cnis* (National Council for Statistical Information) and the Statistical Confidentiality Committee.

More detailed comments about the Statistical Confidentiality Committee and its history can be found in issue n° 128 of September-December of the *Courrier des Statistiques*.

Comments on Chapter II of the Decree of 20 March 2009

CHAPTER II: THE [STATISTICAL CONFIDENTIALITY COMMITTEE](#)

Article 14

I. – The Statistical Confidentiality Committee mentioned in article 6^{bis} of the abovementioned law of 7 June 1951 comprises two sections.

The first section is competent for individual information relating to private and family life, and more generally speaking, to facts and behaviour of a private nature. The second section is competent for individual information of an economic or financial nature.

Subsequent to a decision by the president of the committee, the two sections may meet in plenary formation.

II. – Apart from the president of the committee, each of the two sections comprises:

1 The members of the *Cnis* (National Council for Statistical Information) mentioned in point 1 of article 5;

2 Four representatives of the administration:

a) One representative of the *Insee* (National Institute for Statistics and Economic Studies);

b) One representative of the Minister of Justice;

c) One representative of *Archives de France* (Data Archives administration);

d) One representative of the producer service concerned, who is designated by the minister responsible for this service;

3 The president of the Scientific Council of the Concertation Committee on Data in the Fields of Human and Social Sciences.

III. – Apart from the persons mentioned in II, the first section of the Statistical Confidentiality Committee comprises:

1 Two members designated by the president of the *Cnil* (National Commission for Data Protection and Liberties);

2 Two of the members mentioned in [point 3 of article 5](#), chosen by and from among themselves;

3 One of the members mentioned in [point 4 of the same article](#), chosen by and from among themselves;

4 The representative of the National Union of Family Associations mentioned in point 8 of the same article;

5 One representative of the *Ined* (National Institute for Demographic Studies), designated by the director of said establishment;

6 One member of the Scientific Council of the Concertation Committee for Data in the Fields of Human and Social Sciences, designated by the president of said council.

IV. – Apart from the persons mentioned in II, the second section of the Statistical Confidentiality Committee comprises:

1 One of the members mentioned in point [3 of article 5](#), chosen by and from among themselves;

2 The representatives of the *Medef* (French Enterprise Movement), the *CGPME* (Confederation of Small and Medium Enterprises), the *Union artisanale* (Union of Craftworkers) and the *FNSEA* (National Federation of Farmers' Unions) mentioned in [point 4 of the same article](#);

3 The representatives of the *ACFCI* (Assembly of French Chambers of Commerce and Industry) and of the *APCM* (Permanent Assembly of the Chambers of Skilled Trades) mentioned in point 5 of the same article;

4 One of the members mentioned in [point 6 of the same article](#), chosen by and from among themselves.

V. The members of the Statistical Confidentiality Committee mentioned in points 2, 3 and 4 of III and in points 1, 2, 3 and 4 of IV are entitled to be represented by their alternate at the plenary assembly.

Article 15

The president of the Statistical Confidentiality Committee is appointed for a term of five years. This term can be renewed once.

Article 16

If the president is absent or indisposed, all sections of the Statistical Confidentiality Committee hold their sessions under the chairmanship of the representative of the Minister of Justice. The same applies when these sections meet in plenary formation.

The secretariat of the Statistical Confidentiality Committee is run by the *Insee* (National Institute for Statistics and Economic Studies).

The Statistical Confidentiality Committee can stipulate its operating rules in its rules of procedure.

Article 17

I. – Pursuant to articles 6 and 6^{bis} of the abovementioned law of 7 June 1951, the Statistical Confidentiality Committee issues opinions on [requests for communication](#) of information collected pursuant to this law.

The president of the Statistical Confidentiality Committee determines which section should examine the request. He can decide to submit a request to the plenary formation.

When forming its opinion, the section or the plenary formation of the Statistical Confidentiality Committee takes into account the nature of the work for which the request has been made and the status of the person or body making the request and the guarantees he or it provides. It checks that the volume of information requested is not excessive in relation to the work that justifies the communication of said information and that communicating it will not lead to excessive damage being caused to the interests that the abovementioned law of 7 June 1951 has sought to protect. In the case of requests pertaining to facts and behaviour of a private nature, the competent section or the plenary formation checks that the request has been made for the purposes of public statistics or scientific or historical research. In each case, the section or plenary formation of the Statistical Confidentiality



Committee determines the conditions under which this individual information can be brought to the knowledge of the requester.

II. – The recommendations made by the plenary formation of the Statistical Confidentiality Committee pursuant to article 7^{ter} of the abovementioned law of 7 June 1951 are issued under the same conditions.

III. - Once the Statistical Confidentiality Committee has issued its opinion or its recommendations, and providing the authority having produced the documents gives its agreement, [authorisation to communicate](#) the information is granted by the *Archives de France* (Data Archives Administration).

IV. – The sections and the plenary formation of the Statistical Confidentiality Committee can also issue [general opinions](#) on the dissemination of individual information collected within the framework of the abovementioned law of 7 June 1951.

Article 18

The Statistical Confidentiality Committee can authorise public or private legal persons to act as agents at certain stages in the processing of a statistical survey, thus giving them temporary knowledge of individual information collected during this or previous surveys. It sets down the conditions under which the individual information is communicated

1. When it was founded in 1984, this committee's full name was the "Committee of Statistical Confidentiality Relating to Enterprises". Its competency was restricted to economic or financial data collected by means of statistical studies on businesses. It was then extended to public bodies and local authorities on the one hand and to administrative data already processed by INSEE or a MSS on the other hand, by Order [n° 2004-280 of 25 March 2004](#) relating to simplifications in the field of statistical studies, then to data relating to private facts and behaviour, by article 25 of the Law [n° 2008-696 of 15 July 2008](#) relating to Data Archives.
2. The members mentioned in 1° of article 5 of the decree are representatives at the *Cnis* (National Council for Statistical Information) of the Constitutional Assemblies: a member of *Assemblée Nationale* (House of Commons), a senator, a member of the *CESE* (Economic, Social and Environmental Committee).
3. The members mentioned in 3° of article 5 of the decree are representatives of trade union organisations: CGT, CFDT, FO, CFTC and CGC.
4. The members mentioned in 4° of article 5 of the decree are representatives of the employers' organisations: Medef, CGPME, UPA, UNAPL, FNSEA, FBF and FFSA.
5. The members mentioned in 6° of article 5 of the decree are representatives of the local authorities: regional councillors, general councillors, *EPCI* (groups of municipalities) presidents, Mayors, regional economic and social councillors.
6. The president of the Statistical Confidentiality Committee is a *Conseiller d'État*, appointed by the Vice-President of the *Conseil d'État* (the highest administrative court). He is an ex-officio member of the *Autorité de la statistique publique* (Public Statistics Authority).
7. The Statistical Confidentiality Committee may propose individual or collective exemptions to the rules of statistical confidentiality.

Individual exemptions are at the request of a person presented by an organisation or a researcher presented by an academic laboratory, wishing to have access to individual data obtained by means of statistical surveys or featuring in administrative files already sent to INSEE or a MSS in application of [article 7^{bis}](#) of the Law of 1951.

To obtain this exemption, the requester must send a dossier to the secretariat of the Statistical Confidentiality Committee (comite-secret@cnis.fr) to back up the request. This contains the detailed purpose of the study justifying the request for exemption, a precise description of the

information requested, and the name of the persons who will have access to this information. The requester is strongly recommended to get in direct contact with the department that has produced the requested data first, in order to ensure that they are already available and correspond to the requester's expectations.

The Statistical Confidentiality Committee examines the request in the light of the following criteria:

- does the requester offer all guarantees as regards protection of the confidential data that may be transmitted to him?
- is the communication of this data not likely to compromise the protection of privacy or the rules of competition that the law on statistical confidentiality intends to protect?
- is this information not likely to be used for the purposes of tax inspection or economic repression, both of which are prohibited by article 6 of the Law of 1951?
- does the purpose of the study justifying the request offer sufficient interest?
- are the data requested not excessive in comparison with the study justifying them?
- in particular, would it not be possible to carry out this study without using information covered by statistical confidentiality?

During a session in the presence of the requester, the committee deliberates on communication of all or part of the information requested. In the event of a positive response, it sets the conditions for this transmission:

- setting a deadline after which all the information transmitted must be destroyed
- signature by each of the recipients of the information mentioned in the request of an acknowledgement of the rules of statistical confidentiality
- undertaking to comply with the rules of confidentiality in all the publications to be produced using these data and to send a copy of them to the Statistical Confidentiality Committee

This opinion of the Statistical Confidentiality Committee is then sent to the Data Archives Administration which alone may give a formal authorisation for communication, after agreement from the authority from which the documents originate.

In the event of a breach of statistical confidentiality following this communication, it is the person who benefits from this breach who is personally and criminally responsible for the disclosure of the confidential data.

Collective exemptions by the Statistical Confidentiality Committee are more exceptional; the Committee makes a proposal to the Data Archives Administration to make a general decision regarding statistical confidentiality.

These exemptions offer, for example, the possibility of disseminating the following information for each enterprise, unless the enterprise opposes this by notification to the Statistical Confidentiality Committee:⁷

- the main activity
- secondary activity (if any)
- headcounts of the enterprise and each of its establishments, once a year
- category of turnover (9 brackets)
- share of turnover achieved in exports (4 brackets)
- presence of research and development activity.

As regards households, the Statistical Confidentiality Committee gave a favourable opinion on a general exemption to statistical confidentiality for scientific or historical research purposes, for access to the nominative lists drawn up by mayors on the occasion of general population censuses until 1975. It specified that this right to access is not accompanied by a right to reuse, notably for commercial purposes. This opinion was followed by a [ruling](#) of the Ministers for Culture and for the Economy.

8. At all events, the formal authorisation for communication is given by the French Data Archives Administration.⁸ Nonetheless, this directorate must first obtain both the opinion of the

⁷ There are also collective exemptions for a more restricted public: for example, the authorisation for access by certain Ministerial Statistical Services (MSS) to business surveys.

⁸ Until Law [n° 2008-696 of 15 July 2008](#) relating to Data Archives, the Minister for the Economy was empowered to make this decision.



Statistical Confidentiality Committee and the agreement from the authority from which the documents originate; in practice, this latter authority comprises the Ministry responsible for the requesting department and the Director General of INSEE, in his capacity as overall coordinator of public statistics.

9. Article 18 of the decree also allows for the conduct of certain stages in a survey or the exploitation of confidential data by subcontractors.

This is the case, for example, when a Ministerial Statistical Service wishes to conduct a household survey and it does not have a suitable network of investigators. If it obtains the agreement from the Statistical Confidentiality Committee, it may subcontract data collection either to another administrative body (INSEE for example) or to a private firm. Another example is the use of a service company for electronic capture of data when documents are collected on paper (population census, for example).

At all events, the subcontractor is only authorised to read confidential data on a temporary basis; it may not use it for any purpose other than that stipulated in the subcontracting agreement. When its work is completed, it must destroy all the confidential information entrusted to it in the framework of its subcontracting assignment.

Provisions specific to statistics in the “Data processing, Files and Individual Liberties” law

[Law n°78-17 of 6 January 1978](#) (text in French) relating to data processing, files and individual liberties (commonly known as the “Data processing and liberties law”), includes a number of provisions specific to public statistics. Although these provisions are not strictly speaking part of the rules of statistical confidentiality, they are nonetheless comparable to them. This is why it has been deemed useful to refer to them here.

1. The law defines the notion of “[personal data](#)”, which is not exactly the same as that of “[individual information](#)” cited in the Law of 1951.
2. Irrespective of the initial purposes of the processing of personal data, ulterior processing of these data for statistical purposes always remains compatible with these initial purposes.

Indeed, article 6 of the law specifies:

“[The data] are collected for fixed, explicit and legitimate purposes and shall not be processed at a later date in a manner incompatible with such purposes. However, data processing at a later date for statistical purposes or for the purposes of historical or scientific research is considered as compatible with the initial purposes of data collection, providing it is carried out in compliance with the principles and procedures stipulated in the present chapter, in chapter IV and in section 1 of chapter V, as well as in chapters IX and X, and providing it is not used to make decisions with regard to the persons concerned.”

3. As regards the collection of sensitive data, article 8 of the law first sets out a general prohibition:

“I. It is prohibited to collect or process personal data that directly or indirectly feature the racial or ethnic origins of people, their political, philosophical or religious opinions, the trade union they belong to, or information about their health or sex life.”

However, several exceptions to this rule are listed further in the article, in particular:

“In that the purpose of the processing so requires for certain categories of data, the following are not subject to the prohibition stipulated in I:

(...) Statistical processing performed by the Insee (National Institute for Statistics and Economic Studies) or one of the Ministerial Statistical Services in compliance with Law n° 51-711 of 7 June 1951 on legal obligation, coordination and confidentiality in the field of statistics, after an opinion of the Cnis (National Council for Statistical Information) and under the conditions stipulated in article 25 of the present law.⁹

(...) processing, either computerised or not, that is justified as being in the public interest and authorised under the conditions provided for in I of article 25¹⁰ or in II of article 26¹¹”

4. The processing of certain data produced by INSEE requires an opinion of the National Data Processing, Files and Individual Liberties Commission (CNIL). This is the processing of data extracted from the national register of identification or that requiring the consultation of this register, or data drawn from the population census. This is explained in article 27 of the law:

“I. The following are authorised by a Conseil d’État decree further to a reasoned, published opinion from the Cnil (National Data Processing, Files and Individual Liberties Commission):

1° The processing of personal data on behalf of the State, of a public official or a private agent managing a public service, when this processing covers data among which feature the registration numbers of persons in the national register of identification;

⁹ That is, after explicit authorisation from the Cnil.

¹⁰ That is, after explicit authorisation from the Cnil.

¹¹ That is, after an opinion of the Cnil and a Council of State decree.

(...) II. – *The following are authorised by ruling or, in the event of processing on behalf of a public establishment or a private agent managing a public service, by decision of the legislative body responsible for their organisation, further to a reasoned, published opinion from the Cnil (National Data Processing, Files and Individual Liberties Commission):*

1° *The processing implemented by the State or the persons mentioned in I and which requires consultation of the national register of identification, without including the registration number;*

2° *The processing mentioned in I:*

- *which does not include any of the data mentioned in I of article 8 or in article 9;*

- *which does not give rise to an inter-connection between processing actions or files corresponding to different public interests;*

- *and which is implemented by services whose mission is to determine the conditions for entitlement to or the extent of a citizen's right, or to establish the tax base, to inspect or recover taxes or duties of any nature, or to draw up statistics;*

3° *Processing relating to the population census in metropolitan France and in the overseas collectivities; (...)*"

5. When the data have not been collected from the person concerned but from a third party (who has collected them from that person), the latter must be informed of the new processing of these data. However, once again, processing for statistical purposes is an exception. Article 32 of the law sets out the following:

"When the personal data have not been collected from the person concerned, the person responsible for the processing or his representative shall provide the latter with the information listed in I as soon as the data are recorded (...).

When the personal data have initially been collected for another purpose, the provisions of the previous paragraph do not apply to the processing required for conservation of these data for historical, statistical or scientific purposes, under the conditions stipulated in Book II of the Code du patrimoine (Heritage Code), or for the reuse of these data for statistical purposes under the conditions of article 7 bis of Law n° 51-711 of 7 June 1951 relating to legal obligation, coordination and confidentiality in the field of statistics."

6. Lastly, the law authorises a longer period of conservation of personal data than that initially stipulated when these data are to be processed for statistical purposes. As stated by article 35 of the law:

Personal data may only be conserved for longer than the period stipulated in 5° of article 6 [that is, a period that does not exceed the period required for the purposes for which they were collected and processed] in order to be processed for historical, statistical or scientific purposes; the choice of the data conserved in this way is made under the conditions provided for in article L. 212-4 of the Code du patrimoine (Heritage Code)."

Definitions:

Individual information: this term appears in [article 6](#) of the 1951 law, but is not defined.

At the time the law was adopted (June 1951), this expression was unambiguous: it referred to paper forms collected during the surveys themselves. As a result, information concerning an individual remained attached to the paper on which it had been written and was therefore inevitably **of a personal nature**. Since then there have been significant advances in the field of data encoding, capture and reproduction technologies. And it is possible to process individual information without it being possible, however, to identify the person to whom the information refers.

Case law relating to interpretations of this term continues to be based on concepts which reflect the prevailing conditions when the only format used for information was paper. As a result individual information has come to be regarded as information for which it is possible to make a [direct or indirect identification](#), as defined below.

This definition holds for all statistical units, be they legal or natural persons. For natural persons, it is a little less strict than the definition of « [personal data](#) » in French law. For information to be defined as « personal data », it only needs to be identifiable by someone, but not necessarily the person who usually has access to this information. For information to be regarded as « individual », it has to be possible for the identification to be made by the person who has access to the data itself, either directly or indirectly, thanks to other information in his possession (files, directories, lists...)

This definition confers on the term « individual information » a definition relating to the person who has access to the information. For example, information containing a tax identifier would be individual information for the *DGFIP* (Directorate General for Public Finances), but would not be so for an ordinary citizen who does not know how to find out the name of the person from a tax number.

This definition authorises the dissemination of information to certain recipients, complying with statistical confidentiality, while divulging the same information to other recipients would constitute a breach of this confidentiality. Obviously making information available over the internet does not allow for this distinction to be made.

Personal data: the definition of this term is provided in article 2 of Act [n° 78-17 of 6 January 1978](#) on Data processing, Files and Individual liberties:

« Personal data is any information relating to a natural person who is identified or who can be identified, directly or indirectly, through reference to an identification number or to one or several elements specific to that person. In order to determine whether a person is identifiable, consideration should be given to all the means enabling him to be identified which the controller or any other person has at his disposal or can have access to. »

It should be noted that this definition of personal data is different from the one laid down in [directive n°95/46](#) of the European Parliament and of the Council of 24 October 1995, which contains the following definition:

« For the purposes of this directive, (...) «personal data» shall mean: any information relating to an identified or identifiable natural person (data subject); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity » (article 2a)

and

« to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person» (recital 26)



The adverb « *reasonably* » has disappeared from the French version (it is not an omission: it is a decision made by the French Parliament when the directive came to be transposed). According to the French interpretation, information concerning a natural person is regarded as personal data even if « unreasonable » means have to be employed in order to succeed in identifying the person.

The processing of personal data is regulated by the law of 6 January 1978 rather than by the law of 7 June 1951, which precedes the former by many years and does not formally prevent the divulging of personal data.

For example, the *Cnil* (National Commission for Data Protection and Liberties) considers that information drawn from the population census, even when it is aggregated, can constitute personal data. That is why it regulates very strictly the publication of the results of the census at a level below municipality level by making it de facto unlawful to produce tables to a more detailed level than Iris level (around 2 000 inhabitants). Simple compliance with statistical confidentiality would usually make it possible to disseminate aggregated results at a more detailed level.

Conversely, some personal data processing operations may be accepted under the general rules of the *Cnil*, but forbidden under statistical confidentiality rules. In such cases, these processing operations are not allowed.

Direct or indirect identification: the definition of these terms is provided in article 2 of [regulation n° 1588/90 of the Council of 11 June 1990](#).

« *Direct identification:*

identification of a statistical unit from its name or address, or from an officially allocated and published identification number;

Indirect identification: possibility of deducing the identity of a statistical unit other than from the information mentioned in the [previous] point »

Sensitive data

The term « sensitive data » is the term commonly used to designate the category of data referred to in article 8 of the law on Act on [Data processing, Data files and Individual liberties](#). This data is personal data which shows, directly or indirectly, the **racial** or **ethnic origins**, the **political**, **philosophical** or **religious opinions** or **trade union membership** of the persons concerned, or which relates to their **health** or **sex lives**.

The general rule is that it is forbidden to collect and process such data.

However, if the purpose of the operation so requires, collection and processing of the data can be authorised in certain cases, especially:

- when the person concerned has given his express consent;
- for statistical processing carried out by the *Insee* (National Institute for Statistics and Economic Studies) or one of the Ministerial Statistical Services, subsequent to an opinion from the *Cnis* (National Council for Statistical Information) and authorisation from *Cnil*;
- for data processing, either computerised or not, that is justified because it is in the public interest and has been authorised by *Cnil*.



Professional/unprofessional use of statistics

Apart from statistical confidentiality itself, other precautions must be taken when disseminating data drawn from public statistics. The European Statistics Code of Practice stipulates that « *Statistics are presented in a form that facilitates proper interpretation and meaningful comparisons*».

When anonymised individual data files (detail files) are disseminated, it must be ensured that none of the individuals contained in the file can be identified. But care must be taken to avoid producing statistical tables that are not meaningful.

For example, if the survey was constructed in such a way as to be representative at regional level, and the detail file contains the « département » code, it is not possible, without taking precautions, to produce statistical tables constructed on the basis of this code. It is the precautions taken as a whole before disseminating tables based on detail files that are referred to as professional use of statistics.

In order to make it impossible to produce tables constructed in a unprofessional manner, the detail files that are accessible to the general public do not contain any variables that would create this risk.

However, more detailed files, though they may be scrupulously anonymous, can be passed on to people who are very familiar with statistical techniques and limits (researchers, ministerial statistical services, study services) and are therefore unlikely to use them in an unprofessional manner.