

# **French Digital Act : Impact on public statistics**

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**Abstract:** This paper presents the recent legislative move allowing

## **1. The French digital Act**

In October 2016, French Parliament passed an important digital act called « Loi pour une République numérique » (Act for a digital Republic). The scope of this new law was very large from Open Government to the protection of personal data (some dispositions anticipating the entry into force of the corresponding European Regulation. Among the dispositions concerning public statistics, the one concerning access to private data is probably the most important and opens a new way of making statistics. Other measures concern a simplification of procedures necessary to use the social security number when encrypted, the dissemination on a website of every non confidential database and the free access to all products produced by the National Statistical System

## **2. The access to private data : the scanner data**

Since 2012, Insee has collected on a voluntary basis from private societies scanner data concerning prices and amount of sales to be used in the consumer price index (CPI). Once it has been concluded the experiment was positive and that the use of data collected through digital channels could replace the « classical » data collection, Insee felt necessary to ensure the sustainability of the new system by a legal measure. The Government accepted and the measure was voted in October 2016. Two complementary acts taken at the end of 2016 and in the beginning of 2017 allow Insee to collect and use this data.

### **2.1 Why collecting scanner data?**

To collect data used in Consumer Price Index, Insee is using agents collecting data in the shop premises. Using scanner data allows Insee to have an exhaustive view of the consumption pattern without imposing an important burden on business. Scanner data also gives information about the structure of consumption in the targeted shops and therefore could be used to improve the quality of the statistics.

Using scanner data is strictly in line with principles 9 (Non excessive burden on respondents), 10 (cost effectiveness), 11 (relevance) and 13 (timelessness and punctuality). It also opens way to better methodology when computing the index.

## **2.2 A necessary period of test**

Changing the way data is collected always mean a quite long period of tests with businesses. This period is to be used for testing how the data is collected (frequency and format of the transmission, scope,..), but also to compare the results to the real CPI.

The test was made with 4 supermarket groups and begun in 2012. To secure transmissions, a 3-year agreement was signed with these 4 groups and legal precautions were taken to ensure confidentiality of the collected data. The agreement was renewed and some other groups joined.

Data collection was made easier by an existing data collection for private purposes. A data concentrator already collects data and made specific studies for supermarket groups and other clients. Insee just had to collect data there and he received authorisation to do so.

## **2.3 Is a law needed ?**

During the test period, nobody retracted and everything went smoothly. But, when trying to involve other groups, Insee face a rebuke from a very important group. It seems more link to a defiance towards the Government rather one towards Insee, butt whatever the reasons, Insee wasn't able to collect the data.

Insee therefore decided to propose to the Government to legislate on this topic.

## **2.4 Which law ?**

At first, Insee drafted a project in which it was entitled to directly fetch the data in the databases of the private persons. This option was considered dangerous by the legal unit of the ministry for two mains reasons : it could be not conform to the European database directive (which gives important rights to the database maker) and to the French Constitution.

Another way of implementation was taken and the Government accepted to include it in the Digital Act (“Loi pour une République Numerique”). The draft passed the parliamentary discussion and the law was published in October 2016.

### **3. The law and the subsequent acts**

#### **3.1 The law**

As mentioned above, the text doesn't allow Insee to directly fetch the data into the private database. It makes mandatory an electronic transmission of the data by the private entities as soon as three conditions are met.

The first one is the existence of a dialogue between Insee and the private entities detaining data. This dialogue should lead to a public report including the contents of the private entities.

The second condition is to have a public opinion by the National Council of the Statistical Information, which is in charge of advising Insee on the production of statistics.

The third condition is a ministerial act making mandatory the transmission of the data. This act will also give the specification of the transmission.

Insee should only use for statistical purposes and is not allowed to give data identifying business to anybody. This last interdiction includes researchers which is not the policy with other datasets.

Because of these protections, an administrative fine could be inflicted to any business not transmitting the data.

#### **4. And now?**

For scanner data, the three conditions mentioned above are met and the mandatory transmission is about to begin. The use of scanner data for CPI production is forecast in 2 years.

Insee is beginning to explore mobile phone data and credit card data.

## **Annex : The law**

I. - The Minister for the Economy may decide, after obtaining an opinion from the National Council for Statistical Information, that private legal persons solicited for inquiries transmit securely to the public statistical service for the statistical production only data stored in their databases where such information is sought for the purpose of statistical surveys which are made compulsory in accordance with Article 1a.

This decision is preceded by a consultation with the persons of private law solicited for these investigations and a feasibility and opportunity study which is published.

The data transmitted by these legal persons may not be the subject of any communication from the depositary service. Only information from this data which has been aggregated and which does not allow the identification of these legal entities is subject to Book II of the Heritage Code.

The conditions under which such surveys are carried out, including their feasibility, timeliness, methods of data collection and, where appropriate, temporary registration and destruction, shall be laid down by complementary regulation.

II. - By way of derogation from Article 7, where the legal person sought for the investigation refuses to transmit information in accordance with the decision taken under the conditions referred to in paragraph I of this Article, the Minister responsible for the economy puts this person on notice. This notice sets the time limit for the person sought for the investigation to submit his observations. This period may not be less than one month.

If the person sought for the investigation fails to comply with this formal notice, the Minister shall submit an opinion to the National Council for Statistical Information, meeting in the Committee on Legal Compulsory Statistical Surveys. The person sought for the investigation is heard by the committee.

In the light of this opinion, the Minister may, by reasoned decision, impose an administrative fine. After a period of two years from the date of receipt of the notice, the Minister may no longer impose a fine.

The amount of the first fine incurred in this respect shall not exceed EUR 25 000. In the event of a subsequent infringement within three years, the amount of the fine may be raised to a maximum of EUR 50 000.

The Minister may make public the penalties he imposes. He may also order their inclusion in publications, newspapers and media that he designates, at the expense of the persons sanctioned.