



## Final Report

European Commission  
Information Society and Media Directorate-General  
Digital Libraries & Public Sector Information Unit

### Public Sector Information (PSI): Identification of potential Exclusive Arrangements (EA) in Germany

The opinions expressed in this study are those of the authors and do not necessarily reflect the views of the European Commission.

## CONTENTS

## EXECUTIVE SUMMARY

## POTENTIAL EA SUMMARY SHEETS

Summary Sheet 1: German Federal Law Data Base.....	6
Summary Sheet 2: Pollen Level Measurement Data.....	8
<b>1. INTRODUCTION.....</b>	<b>10</b>
1.1. PSI Re-use in Europe: Recent Developments.....	12
1.2. Exclusive Agreements under the PSI Directive .....	13
1.3. The Regulatory Framework Impacting PSI Re-use in Germany.....	15
1.4. The PSI Directive 2003/98/EC and its Implementation in Germany .....	17
1.5. Exclusive Agreements in Germany.....	18
1.6. Survey of Potential Exclusive Agreements in Germany .....	20
<b>2. THE IPEAG 2010 SURVEY.....</b>	<b>22</b>
2.1. Requirements of the Study.....	22
2.2. Methodology of the Study.....	22
2.3. The Inception Report and Selection of Information Market Domains....	26
2.4. Data Acquisition and Assessment – Supply Side.....	31
2.5. Data Acquisition and Assessment – Demand Side.....	32
2.6. Quantitative Results .....	42
2.7. Qualitative Results.....	48
<b>3. DETAILED ANALYSIS OF SURVEY FINDINGS.....</b>	<b>50</b>
3.1. Overview.....	50
3.2. Legal Information Market.....	50
3.3. Business Information Market.....	55
3.4. Weather Information Market.....	59
<b>4. MARKET-BASED ANALYSIS OF SURVEY FINDINGS.....</b>	<b>62</b>
4.1. Background and Context.....	62
4.2. Legal Information Market.....	62
4.3. Business Information Market.....	65
4.4. Weather Information Market.....	71
4.5. Geoinformation Market.....	73
4.6. Summary.....	75

<b>5. CONCLUSIONS .....</b>	<b>77</b>
<b>5.1. Perspective is Essential to Understanding Local PSI Re-use Markets.....</b>	<b>77</b>
<b>5.2. Seismic Change in Regulatory Frameworks Surrounding PSI Re-use....</b>	<b>78</b>
<b>5.3. Geoinformation is Leading the Way Towards PSI Re-use in Germany...</b>	<b>81</b>
<b>5.4. Transparency of the Public Task will Unlock Potential in PSI Re-use ...</b>	<b>82</b>
<b>6. RECOMMENDATIONS.....</b>	<b>83</b>
<b>6.1. Actively Promote PPPs as Means of Developing PSI Re-use Markets.....</b>	<b>83</b>
<b>6.2. Place PSI Re-use on Legal Reform Agendas.....</b>	<b>84</b>
<b>6.3. Pre-empt EAs by Promoting Model PSI Re-use licences.....</b>	<b>84</b>
<b>REFERENCES.....</b>	<b>86</b>
<b>7.1. Institutions and Organisations.....</b>	<b>86</b>
<b>7.2. Legislation and Explanatory Notes.....</b>	<b>87</b>
<b>7.3. Legal Analysis Resources List.....</b>	<b>87</b>
<b>ANNEX 1 – Background Materials posted to GEOkomm Website</b>	
<b>ANNEX 2 – Inception Report</b>	
<b>ANNEX 3 – PSB Survey Package</b>	
<b>ANNEX 4 – Re-user Survey Package</b>	
<b>ANNEX 5 – List of PSBs involved in Survey</b>	
<b>ANNEX 6 – List of Re-users involved in Survey</b>	

#### Note of the citation method used in the report

The report will use the following citation conventions in order to reduce the number of footnotes and generally improve the readability of the text. First time references in the text to portals, institutions and organisations will be highlighted in **bold script** and their web links given in the References section at the end of the report.

As a matter of preference German legislation will be referred to by an English language name but German abbreviation. Cited for the first time in the text, a footnote will give the full citation in German. Thereafter the reader is referred to the References section. The full text of Federal legislation can be obtained from the “**Gesetze-  
im-Internet Portal**” website produced by the German Federal Ministry of Justice in cooperation with juris GmbH.

References to German legislative provisions will use the convention “German paragraph sign (§) / roman numeral / number / German abbreviation” to indicate “paragraph / sub-paragraph / sentence / law”. So for example the German citation “§ 3 Abs.1 Satz 1 IWG” will be given as § 3 I 1 IWG”.

## EXECUTIVE SUMMARY

### Background

1. In accordance with its *Communication* of the review of the Directive 2003/98/EC on the re-use of public sector information (PSI Directive), the European Commission launched a study for assessing the existence of possible exclusive agreements concluded by public sector bodies (PSBs) in Germany.
2. Directive 2003/98/EC was transposed into German law by the German Information Re-use Law (Informationsweiterverwendungsgesetz – IWG) and entered into force on 19th December 2006. In contrast to freedom of information legislation that has to be implemented by each individual Federal State and upon which the IWG is dependent for information access, the IWG is a Federal Law. As such it automatically applies to all Federal authorities, Federal State authorities and municipal administrations.
3. The purpose of the EU commissioned study was to collect relevant information from the public side (Supply) and the private side (Demand) of the German market for public sector information (PSI) on the potential existence of exclusive agreements in the light of § 3 IV IWG, the German Information Re-use law, the provision through which Article 11 of the PSI Directive has been transposed into German law.
4. The study has been carried out by GEOkomm – Association of the GeoInformation Industry Berlin/Brandenburg in cooperation with its partners in the consortium, Online Consultants International GmbH and the IWG-Netzwerk e.V. The project was allocated the title *Identification of Potential Exclusive Arrangements in Germany – 2010* which generated the acronym IPEAG 2010.
5. In the first and second quarter of 2010 responses to questionnaires were collected on behalf of public sector bodies in Germany (Supply) as well as from firms, institutions and individuals (Demand). The four market segments under consideration were legal information, business information, weather information and geoinformation (which included environmental information).

### Key Findings

6. **There is a low awareness and limited understanding concerning the application of Directive 2003/98/EC amongst public and private sector organisations.** Although a technical legislative framework enabling the re-use of public sector information has been in place for nearly 4 years, many of the basic ideas behind contemporary PSI re-use are by and large poorly understood let alone accepted and acted upon in public sector institutions. Fundamental concepts have still to resonate at the public sector's operational level.
7. **The study provided leads to two possible exclusive agreements.** From the questionnaires and contributions of trade and professional associations the study was able to collect

information representing 157 public sector bodies and 332, mostly commercial, re-users. Analysis of the data provided leads to three possible exclusive agreements. Further legal analysis however came to the conclusion that the two cases discussed do not constitute exclusive agreements as understood by § 3 IV IWG, the German Information Re-use Law and hence by Article 11 of Directive 2003/98/EC.

8. **Germany has nevertheless a long tradition of re-using PSI in different market sectors.** In a unique assessment derived from a market-based analysis of the survey findings, conducted to provide context, the study estimates that the size of the German market heavily dependent on PSI re-use is comfortably over € 2.77 billion. These markets have still potential to unlock and inter-market synergies to explore.
9. **Germany has undergone seismic legislative change since the PSI Directive of 2003.** Much of this change has led to the better coordination of policy and operational implementation across Federal, Federal State and municipal boundaries despite legal, political and administrative differences. PSI re-user markets are likely to benefit first from these developments. Many key market drivers are EU driven initiatives (e.g. INSPIRE Directive, SEIS) designed to re-engineer public sector information infrastructures in order to be able to better construct, implement and report on policies and initiatives sponsored and supervised by the EU.
10. **A “PSI Re-use by Design” policy is recommended to unlock the potential in PSI re-use.** Given the size of the traditional markets as well as the extent of regulatory turbulence the study recommends systematically inserting the principles of PSI re-use into policy and legal reform agendas. In other words to encourage the active pursuit of a policy of PSI re-use by design, analogous to “privacy by design” currently being discussed in data protection circles. An example of “PSI re-use by design” given in the report involves encouraging public sector bodies holding geoinformation to adopt model licences, supportive of PSI re-use, for the data they hold so that exclusive agreements in the future can be pre-empted and at best completely avoided.

## EXCLUSIVE AGREEMENTS

### Summary Sheet 1: German Federal Law Data Base

(See section 3.2.)

#### Description

The German company makrolog Content Management AG initiated litigation against the Federal Republic of Germany, represented by the Federal Office of Justice, in respect of legal information, that collected by official documentation centres, constitutes the legal material which makes up the Federal Law Database maintained in the form of the “gesetze-im-internet” portal by juris GmbH GmbH.

#### IPEAG 2010 Project Assessment

Although Article 11 of Directive 2003/98/EC generally prohibits exclusive agreements it does not ban them completely. Where there is a public interest to warrant such an agreement, the Directive sets out specific conditions upon which such an agreement can be sustained. Namely, that full details regarding the agreement are published and that the arrangement be reviewed every three years.

Assessing the appropriateness of this dispute in the light of Article 11 of Directive 2003/98/EC it is the view of the IPEAG 2010 Project Team that

- there is a *de jura* and *de facto* exclusive agreement between the Federal Government and juris GmbH regarding the provision of legal information, that, collected by official document centres, constitutes the Federal Law Database (Bundesrechtsdatenbank). The Federal Office of Justice (BfJ) explicitly states that the agreement is exclusive. Similarly, in a related matter involving juris GmbH and the DG Internal Market and Services, a representative of the European Ombudsman’s office described the arrangement as “exclusive”.<sup>1</sup>
- The issue of whether the agreement between the Federal Government and juris GmbH which is usually referred to as the “Bundesvertrag”, constitutes an exclusive agreement as understood by Article 11 of Directive 2003/98/EC is a further and contentious question. The Federal Government argues that the arrangement as provided for by the “Bundesvertrag” is not covered by the German Information Re-use Law (IWG) and therefore remains out of the scope of Directive 2003/98/EC. The Federal Office of Justice (BfJ) argues for the agreement’s justification on the grounds of public interest but has not published details to support this view. This however, is logical if as previously stated the BfJ understands the provisions of Directive 2003/98/EC not to be applicable.

---

<sup>1</sup> Letter from the European Ombudsman to makrolog Content Management AG, dated 4<sup>th</sup> June 2010.

- MCM AG on the other hand has recorded at least 5 scenarios in which economic benefit is derived by juris GmbH as a result of the arrangement it has with the Federal Government. That juris GmbH's role in the arrangement goes beyond that which is necessary to protect the integrity of the "gesetze-im-internet" portal.

On the basis of this assessment the IPEAG 2010 Project Team takes the view that the arrangement between the German Federal government and juris GmbH warrants further clarification in order to determine conclusively that it is not an exclusive agreement as understood by Article 11 of Directive 2003/98/EC.

This assessment would however also add that a more market-orientated remedy which would bring benefit to all stakeholders in this segment of the PSI re-use market will more likely require a policy change than specific amendments to the existing regulatory framework. In this case the model used by the Federal government with respect to involving commercial organisations in the performance of the public tasks required by the electronic Bundesanzeiger is of potential interest.

### Contact Details of the Respective Parties

<b>Organisation:</b>	makrolog Content Management AG Registergericht: Amtsgericht Wiesbaden Registernummer: HRB 21424	Bundesamt für Justiz
<b>Contacts:</b>	<b>Board of Directors:</b> Andreas Herberger (Chairman)	Herr Gerhard Fieberg Präsident des Bundesamt für Justiz
<b>Communications:</b>	makrolog Content Management AG Patrickstrasse 43 65191 Wiesbaden  Telefon: +49 (0)611 - 95 78 20, Telefax: +49 (0)611 - 95 78 228  Email: <a href="mailto:postmaster@makrolog.de">postmaster@makrolog.de</a> URL: <a href="http://www.makrolog.de">http://www.makrolog.de</a>	Bundesamt für Justiz Adenauerallee 99 - 103 53113 Bonn  Telefon: +49 (0)228 99 410 – 40 Fax: +49 (0)228 99 410 - 5050  E-Mail: <a href="mailto:pressestelle@bfj.bund.de">pressestelle@bfj.bund.de</a> URL: <a href="http://www.bundesamt.de">www.bundesamt.de</a>

**Summary Sheet 2: Pollen Level Measurement Data****(See section 3.4.)****Description**

The German Association of Weather Services Providers (VDW) has called upon the German Foundation for Pollen Information Services (PID) to provide information on pollen emission levels to the members of the Association and not only, that is, exclusively to the German Weather Service (DWD).

According to the VDW, the Association acting on behalf of its members, has requested the supply of data concerning pollen levels from the German Foundation for Pollen Information Services. The VDW's repeated requests have met with no success although the data is exclusively supplied to the DWD, an organisation which the Association asserts competes with its members in the market for the provision of weather information services. In a letter dated 8<sup>th</sup> March 2010 the VDW has requested that its members be supplied pollen emissions data under § 3 I IWG, the German Information Re-use Law.

**IPEAG 2010 Project Assessment**

Although Article 11 of Directive 2003/98/EC generally prohibits exclusive agreements it does not ban them completely. Where there is a public interest to warrant such an agreement, the Directive sets out specific conditions upon which such an agreement can be sustained. Namely, that full details regarding the agreement are published and that the arrangement be reviewed every three years.

It is the assessment of the IPEAG 2010 Project Team that

- there is a *prima facie* case indicating the existence of a possible exclusive agreement governing the supply of pollen emissions data from the German Foundation for Pollen Information Services (Stiftung Deutscher Polleninformationsdienst (PID) to the German Weather Service (DWD),
- there is neither an indication on the Website of the PID nor from any communication from the Foundation's management that a restriction on the supply of the pollen emission information to a single organisation is warranted on the basis of public interest as understood by § 2 Nr. 1 b IWG.

However, in this particular case the IPEAG 2010 Project Team also highlights the need to clarify to what extent the German Foundation for Pollen Information Services (PID) is indeed a public body as understood by § 2 Nr. 1 b IWG as assumed by the VDW in its letter to PID dated 8<sup>th</sup> March 2010. The Foundation is after all financed primarily by RPR Fisons Arzneimittel GmbH Pfizer and provides a service determined by the Foundation's originators.

**Public Sector Information (PSI):**

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

**Contact Details of the Respective Parties:**

<b>Organisation:</b>	Verband Deutscher Wetterdienstleister e.V. Registergericht: Amtsgericht Charlottenburg Registernummer: VR 23546 Nz	Stiftung Deutscher Polleninformationsdienst
<b>Contacts:</b>	<b>Board of Directors:</b> Dennis Schulze (Chairman) Dr. Joachim Klassen Norman Gabler	<b>Board of Directors:</b> Prof. Dr. med. Karl-Christian Bergmann (Chairman) Frau Prof. Dr. med. Heidrun Behrendt Dipl.-Met. Uwe Kaminski
<b>Communications:</b>	Verband Deutscher Wetterdienstleister e.V. Gradestraße 50 12347 Berlin  Telefon: (030) 600 98 – 200 Telefax: (030) 600 98 – 288  Email: <a href="mailto:vorstand@wetterverband.de">vorstand@wetterverband.de</a> URL: <a href="http://www.wetterverband.de">http://www.wetterverband.de</a>	Geschäftsstelle Charitéplatz 1 10117 Berlin  Telefon: +49 30 450 518006 Telefax: +49 30 450 518988  E-Mail: <a href="mailto:pollenstiftung@t-online.de">pollenstiftung@t-online.de</a> URL: <a href="http://www.pollenstiftung.de/">http://www.pollenstiftung.de/</a>

## 1. INTRODUCTION

The public sector is the biggest provider of information in Europe. In the rapidly developing information society and knowledge economy, public sector information (PSI) re-use constitutes an enormous source of information for new innovative products and services, the unleashed potential of which can result in increased productivity and employment. However, there are still numerous barriers preventing both private and public sector unlock the potential in the re-use of public sector information.

In 2008 the European Commission carried out extensive work evaluating the implementation and impact of Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.<sup>2</sup> Following the review of Directive 2003/98/EC, also referred to as the PSI Directive, the European Commission resolved to take action to identify and reduce barriers to PSI re-use. The *Communication*<sup>3</sup> on the review of the PSI Directive, highlighted the Commission's intention to look into the possible existence of exclusive agreements in EU Members States.

This document constitutes the Final Report from the **GEOkomm** consortium who undertook work in Germany to identify the existence and extent, if any, of exclusive agreements between suppliers of public sector information and third parties. As already indicated in the Executive Summary above the research was able to identify three leads that could be interpreted as possible exclusive agreements. Yet, already here at the very beginning of the Final Report it is necessary to explain the use of such cautious language.

Directive 2003/98/EC has been transposed into German law by Federal legislation referred to here in English as the German Information Re-use Law (Informationsweiterverwendungsgesetz – IWG).<sup>4</sup> The requirement of the study was to identify the possible existence of exclusive agreements as understood by Article 11 of the Directive 2003/98/EC and thereby as understood under German law by § 3 IV IWG. However, the **study clearly indicates that as a piece of legislation the IWG is little known amongst the majority of PSI re-use stakeholders in Germany.**

More importantly, **the aims and objectives of the German Information Re-use Law are poorly understood.** Rights under the German Information Re-use Law can only be exercised by third parties where they have a right to access the public sector information. There is indeed an intimate relationship between legal frameworks that enable freedom of information and legal frameworks providing for re-use of that information. In Germany however, although Federal and Federal State legislators have (to certain degree) put a framework of legal norms in place, the

---

<sup>2</sup> Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, OJ L 345/90, 31.12.2003.

<sup>3</sup> Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Re-use of Public Sector Information–Review of 2003/98/EC of 7th May 2009.

<sup>4</sup> Gesetz über die Weiterverwendung von Informationen öffentlicher Stellen (Informationsweiterverwendungsgesetz – IWG) (BGBl. I, S. 2913) vom 13. Dezember 2006.

individual and collective effect of these legal provisions on the operations of PSI holders and PSI re-users is minimal. In practice **the legislation, or rather the implementation and application of the legislation is still struggling to realise and achieve the aims and objectives of the legislator.**

This situation raised many difficulties for the study and its execution and these will be addressed in the narrative that follows. Nevertheless, an analysis of the problems as well as their consideration in context is revealing about the current state of the PSI re-use market in Germany. In fact, their detailed analysis reveals possible solutions for known problem areas such as the status and role of juris GmbH in the German legal information publishing market.

The analysis also suggests practical steps that can be taken to pro-actively prevent the construction of exclusive agreements in the future. This outcome is both highly relevant and timely as public authorities from the Federal level all the way down to local communities, despite a lack of awareness about the German Information Re-use Law, are gradually waking up to the potential value of their information holdings.

### **Outline of the Final Report**

This first part of the Final Report continues with a brief overview of PSI developments in Germany. The aim is to set the scene by providing background and context for the subsequent analysis of the study's findings.

The second part of the Final Report describes the methods and outcomes of the IPEAG 2010 Project. This second section also includes a discussion on the role played by the IPEAG 2010's **Inception Report**<sup>5</sup> which discussed at length the issues surrounding the classification and therefore identification of information market domains. The main contribution of the Inception Report to the IPEAG 2010 Project was the development of an original and exploitable classification scheme for the German PSI re-use market.

The third part of the Final Report considers in detail the direct outcome of the study, namely two leads to potential exclusive agreements. The potential exclusive agreements are considered by market sector. Details are given on the parties involved in the respective agreements as well as those disputing it. A full legal analysis concluding with an assessment on behalf of the IPEAG 2010 Project Team is also given.

The fourth section discusses the issue of how best to verify the evidential value of the findings given the difficulties of acquiring base information. The IPEAG 2010 Project Team have taken the view that the legal issues and their implications can only be properly understood for Germany where the report takes a "bigger picture" and in particular a market-based view in order to understand the context for the Final Report's conclusions and recommendations. These are discussed at length in parts five and six respectively.

---

<sup>5</sup> Included as Annex 2 to the Final Report.

Section five of the Final Report draws conclusions from the IPEAG 2010 Project's findings arguing that while the study's findings indicate the existence of two possible exclusive arrangements, their assessment and the subsequent action taken upon them must be considered in the general light of PSI developments in Germany. Although a technical legislative framework enabling the re-use of public sector information has been in place for nearly four years, the basic ideas behind PSI re-use are by and large poorly understood let alone accepted and acted upon in public sector institutions. Fundamental concepts propping up and even driving PSI re-use agendas, such as public ownership of official information, official information as an exploitable economic asset, transparency in government etc. have still to resonate at the public sector's operational level.

Section six offers recommendations drawn from the conclusions, comments and observations made in the Final Report. The recommendations are concrete, practical and involve relatively few resources in comparison to the benefit they could bring to unlocking the potential within German information markets based upon the re-use of public sector information.

### **1.1. PSI Re-use in Europe: Recent Developments**

In order to better understand the purpose and focus of the IPEAG 2010 Project report it will help to briefly consider opportunities and barriers to the re-use of public sector information in Europe, drawing attention to what can be done to increase opportunities yet at the same time reduce barriers.

#### **Opportunities and Barriers to PSI Re-use in Europe**

Article 13 of Directive 2003/98/EC requires that the European Commission monitors the effect of the Directive. To this end during 2008 a series of meetings<sup>6</sup> and consultations<sup>7</sup> were held. The European Commission also commissioned a study entitled *Assessment of the Re-Use of Public Sector Information (PSI) in the Geographical Information, Meteorological Information and Legal Information Sectors*. The study carried out by MICUS Management Consultants GmbH, VHS GmbH and Online Consultants International GmbH was published by the European Commission in December 2008.<sup>8</sup>

The outcome of the mandatory evaluation was the *Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Re-use of Public Sector Information – Review of 2003/98/EC* of 7th May 2009.<sup>9</sup> The Communication was accompanied by a document referred to as the *Commission Staff Working Paper*.<sup>10</sup> This document provides comprehensive background on PSI re-use in Europe together with in-depth analysis. Together, the Communication and the Commission Staff

---

<sup>6</sup> Many of these were coordinated through the ePSIplus programme. A list of the meetings can be found on the website.

<sup>7</sup> Organised by the European Commission these consultations took place between September and November 2008.

<sup>8</sup> Assessment of the Re-Use of Public Sector Information (PSI) in the Geographical Information, Meteorological Information and Legal Information Sectors, December 2008. Referred to hereafter as the "MICUS 2008 study".

<sup>9</sup> See footnote 3.

<sup>10</sup> Commission Staff Working Paper, SEC(2009) 597212 final.

Working Paper provide the most up to date and concise overview of the status and impact of the re-use of public sector information across Europe at the present time.

The European Commission's analysis stressed that that while numerous studies substantiate the view that the economic value of PSI re-use is substantial, measuring its value accurately is not a straightforward task. The *MEPSIR* study (2006) contracted by the Commission, for example, puts the overall market size for the re-use of PSI in the European Union at €27 billion.<sup>11</sup> Other recent figures available from the UK Office of Fair Trading (OFT) – *The commercial use of public information (CUPI) Report*<sup>12</sup> – indicate that the contribution of PSI to the UK economy alone reached €730 million in 2006.

One of the points emphasised in the Commission Staff Working Paper that accompanied the Commission's recent Communication was to highlight the evidence and estimates of the potential in PSI re-use to not just the economy but also to society as a whole. Nevertheless there are still impediments to unlocking the potential in these markets. The MICUS 2008 study observed that pricing, a lack of transparency on the part of public bodies continued to be barriers to unlocking the potential in the re-use of PSI. Another potential barrier is the existence and continuation of exclusive agreements.

## 1.2. Exclusive Agreements under the PSI Directive

The term “exclusive agreements” refers to an arrangement whereby by a specific or very limited number of PSI re-users are the sole licensee(s) of official information held by a PSI holder. Generally speaking, such arrangements are considered unhelpful and obstructive in respect of the development of markets based on PSI re-use and as a rule the Directive forbids exclusive agreements. Nevertheless there are exceptions but even these are subject to strict rules.

In the preamble to the Directive the pragmatic approach taken by the Commission is explained:

“Public sector bodies should respect competition rules when establishing the principles for re-use of documents avoiding as far as possible exclusive agreements between themselves and private partners. However, in order to provide a service of general economic interest, an exclusive right to re-use specific public sector documents may sometimes be necessary. This may be the case if no commercial publisher would publish the information without such an exclusive right.”<sup>13</sup>

In the text of the PSI Directive itself Article 11 sets out the rules concerning the prohibition of exclusive arrangements:

---

<sup>11</sup> Study on Measuring European Public Sector Information Resources (MEPSIR), Helm et al., 6/2006.

<sup>12</sup> The commercial use of public information (CUPI), OFT, 12/2006.

<sup>13</sup> See footnote 2, Preamble (20).

1. The re-use of documents shall be open to all potential actors in the market, even if one or more market players already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies holding the documents and third parties shall not grant exclusive rights.
2. However, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years. The exclusive arrangements established after the entry into force of this Directive shall be transparent and made public.
3. Existing exclusive arrangements that do not qualify for the exception under paragraph 2 shall be terminated at the end of the contract or in any case not later than 31 December 2008.

The ideal situation now would be that, as a rule, exclusive agreements between PSI holders and re-users do not exist. Where however they do, there are pressing reasons serving the public interest for the arrangement to be in place, the arrangement is nevertheless transparent and will be reviewed every three years.

Prior to 2009 only two Member States had carried out systematic research to identify the existence of exclusive agreements. These were The Netherlands and the United Kingdom. In the former, carried out in 2006, the Dutch government was concerned to establish the extent, if any, of liability that the public sector would incur in the course of phasing out exclusive agreements in conformity with the Directive. In the UK the **Office of Public Sector Information (OPSI)** conducted a survey in 2008. The survey identified the existence of 7 exclusive agreements all of which were reviewed by OPSI and details posted on the OPSI website.<sup>14</sup>

The need for systematic analysis which involves a direct comparison of the view of PSI holders and re-users is also underlined by the findings of the MEPSIR study. Here in the case of the weather information market domain there was a large discrepancy between the PSI holder's assessments of the existence of exclusive agreements (18% replied positively) and the experience of the re-users when asked a similar question (54% replied positively).<sup>15</sup>

---

<sup>14</sup> See <http://www.opsi.gov.uk/advice/psi-regulations/exclusive-agreements>

<sup>15</sup> See footnote 11, page 51.

### 1.3. The Regulatory Framework Impacting PSI Re-use in Germany

The legal framework designed to facilitate PSI re-use in Germany and mentioned already in the Introduction above also needs further clarification. Seen in very general terms the German political, legal and administrative system comprises a network of hierarchical and regional legal competences whose definition and scope depends upon subject matter concerned and the legal issues being embraced. This network of competences has very practical consequences for the legal framework that impacts re-use of public sector information. Table 1 below gives a simplified overview of the regulatory framework impacting PSI re-use in Germany in terms of the key legislative provisions by theme.

FEDERAL AUTHORITIES (BUND) / FEDERAL STATES (LÄNDER)	Data Protection	Environmental Information	Freedom of Information	Re-use of Public Sector Information	Geo-data Infrastructure
<b>Federal Authorities</b>	✓ 1990	✓ 2004	✓ 2005	✓ <b>2006</b>	✓ 2009
<b>Baden-Württemberg</b>	✓ 2000	✓ 2006	X	✓ 2006	✓ 2009
<b>Bavaria</b>	✓ 1978	✓ 2006	X	✓ 2006	✓ 2008
<b>Berlin</b>	✓ 1990	✓ 2006	✓ 1999	✓ 2006	✓ 2009
<b>Brandenburg</b>	✓ 1999	✓ 2007	✓ 1998	✓ 2006	✓ 2010
<b>Bremen</b>	✓ 1995	✓ 2005	✓ 2006	✓ 2006	✓ 2009
<b>Hamburg</b>	✓ 1990	✓ 2005	✓ 2009	✓ 2006	✓ 2009
<b>Hesse</b>	✓ 1999	✓ 2006	X	✓ 2006	✓ 2010
<b>Mecklenburg- West Pomerania</b>	✓ 2002	✓ 2006	✓ 2006	✓ 2006	✓ 2010
<b>Lower Saxony</b>	✓ 1978	✓ 2006	X	✓ 2006	✓ 2010
<b>North Rhine –Westphalia</b>	✓ 2000	✓ 2007	✓ 2001	✓ 2006	✓ 2009
<b>Rhineland Palatinate</b>	✓ 1994	✓ 2005	✓ 2008	✓ 2006	! <i>(Planned 2010)</i>
<b>Saarland</b>	✓ 1978	✓ 2007	✓ 2006	✓ 2006	✓ 2009
<b>Saxony</b>	✓ 1991	✓ 2006	X	✓ 2006	✓ 2010
<b>Saxony-Anhalt</b>	✓ 1992	✓ 2006	✓ 2008	✓ 2006	✓ 2009
<b>Schleswig- Holstein</b>	✓ 2000	✓ 2007	✓ 2005	✓ 2006	✓ 2010
<b>Thuringia</b>	✓ 2001	✓ 2006	✓ 2007	✓ 2006	✓ 2009

Table 1: Overview of the main legislative acts in Germany that make up the PSI re-use legal and regulatory framework.

The following two sections highlight points that although can only be covered fleetingly are deemed necessary for the subsequent analysis of the study's findings

#### Public Sector Information (PSI):

#### Identification of potential Exclusive Agreements – Germany

GEOkomm IPEAG 2010 – Final Report – Autumn 2010

### 1.3.1. The Distribution of Legal Competence in the German Legal System

Germany is a Federation comprising 16 Federal States. Each Federal State has its own parliament, executive and judiciary and enjoys a degree of legislative autonomy as far as this is provided for by law. The Parliament of the Federation comprises two chambers. The first chamber is the Bundestag to which citizens eligible to vote send representatives during Federal elections. The second chamber is the Bundesrat which represents the interests of the Federal States.

The Basic Law (Grundgesetz) founding the Federal Republic of Germany in 1949 sets out the parameters which determine the type and scope of legal competence between Federal and Federal State institutions. So for example, areas such as foreign relations, defence and the economy are the preserve of Federal legislation, i.e. lie within the responsibility of the Bundestag and Bundesrat. Other areas e.g. education, cadastre, land surveys, etc. are the responsibility of the Federal States and are the preserve of the legislator in each of the Federal States. For example the Parliament in Stuttgart (referred to as the “Landtag”) or the Parliaments in Bremen and Hamburg (each of which are referred to – in contrast - as the “Bürgerschaft”).

While the principle of subsidiary generally prevails the Bund<sup>16</sup> can in specific cases claim legal competence where the interests of the Federal Republic are better served. Article 74 Article 74 I Nr. 11 of the Basic Law states that in certain cases the Bund can draw legislative competence to itself where to do so would be in the interest of the Federation to maintain a unified system for the national benefit.

Table 1 above illustrates how data protection, environmental information and freedom of information are subjects requiring each Federal State as well as the Bund to implement legislation in order that the legal rights and duties provided for by the legislation are effective throughout the whole country. This is in contrast to the German Information Re-use Law (IWG) for which the Federal government citing Article 74 I Nr. 11 GG implemented the IWG using a Federal law, i.e. a “Bundesgesetz”. This has the practical effect that once the legislation had been enacted and subsequently entered into force, it was applicable to all public sector bodies across the country regardless of their administrative level i.e. Federal authorities, Federal State authorities or municipal authorities (Bund-Länder-Kommunen).

Hence in the listing given in Table 1 above a Federal level competence to enact the German Information Re-use Law (IWG) was justified on economic grounds as was the recent Satellite Data Security Law (which also has a PSI re-use aspect it) on the basis of national security.<sup>17</sup> In contrast the German legislation that implements the INSPIRE Directive has to be implemented by the individual Federal States as well as the Federal authorities.

---

<sup>16</sup> For accuracy and to avoid misunderstanding the Federal level of legal competence will be referred to using the German term „Bund“. This leaves the English term Federation in order to be able to describe the combination of Federal and Federal States.

<sup>17</sup> Gesetze zum Schutz vor Gefährdung der Sicherheit der Bundesrepublik Deutschland durch das Verbreiten von hochwertigen Erdfernerkundungsdaten (Satellitendatensicherheitsgesetz – SatDSiG) vom 23. November 2007 (BGBl. I S.2590).

### 1.3.2. Access to Official Information

Article 2 (4) of Directive 2003/98/EC defines re-use of public sector information as use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced. The PSI Directive however, does not confer a right to access public sector information. Rather the PSI Directive assumes that the right of access to public sector information already exists.

Table 1 above also gives a graphical overview of the state of freedom of information legislation in Germany at the time of writing and as such depicts a curious patchwork of legal provisions. At the Federal level the Federal Freedom of Information Law (Informationsfreiheitsgesetz – IFG) of 5th September 2005 implements freedom of information principles where the information is held by Federal authorities only.

At the level of the Federal States, currently 11 out of the 16 Federal States have enacted freedom of information legislation or its equivalent.<sup>18</sup> Given the time span over which the Federal States have enacted this kind of legislation, i.e. Brandenburg in 1998 und Hamburg (for the second time) in 2009, there are noticeable differences between their respective implementations. The contrast is most vivid in Berlin where the IFG law of 1999 last amended in July 2010 still explicitly prohibits the commercial re-use of official information obtained following an IFG request.<sup>19</sup>

Further commentary on the state of freedom of information legislation in Germany is beyond the scope of the present study. That said, it cannot be stressed enough how important pro-active freedom of information thinking and operationally effective policies are to enabling markets based on the re-use of public sector information. The practical point to be made here and one that needed to be considered in the IPEAG 2010 Project is that currently **in Germany there is not a unified, country wide approach to accessing official information to be able to support the nationwide right of re-use of official information.**

### 1.4. The PSI Directive 2003/98/EC and its Implementation in Germany

The EU PSI Directive 2003/98/EC was transposed into German law by the German Information Re-use Law. This piece of legislation is more usually referred to in German literature using its short title, namely the „Informationsweiterverwendungsgesetz – IWG“.<sup>20</sup>

Enacted on 13<sup>th</sup> December 2006 the IWG entered into force on 19th December 2006. Official sources describe the IWG as a 1:1 implementation of the EU PSI directive.<sup>21</sup> As mentioned above

<sup>18</sup> By “its equivalent” means legislation providing for a general right to inspect public files which may not make a explicit reference to freedom of information. This is the case with the legislation from Brandenburg (1998) and Berlin (1999).

<sup>19</sup> § 13 Abs. 7 Berliner Informationsfreiheitsgesetz – IFG

<sup>20</sup> Gesetz über die Weiterverwendung von Informationen öffentlicher Stellen (Informationsweiterverwendungsgesetz – IWG) (BGBL. I, S. 2913) of 13th December 2006.

<sup>21</sup> German Federal Ministry of Economics and Technology. See <http://www.bmwi.de/BMWi/Navigation/Technologie-und-Innovation/Informationsgesellschaft/informationen-des-oeffentlichen-sektors.html>

the IWG is a Federal Law based on Article 74 I Nr. 11 of the Basic Law and as such applies to the Federation, Federal States and the municipal administration. Reflecting the aims and goals of the EU PSI Directive itself, the IWG does not create a right of access to official information. The decisions as to whether official information may be re-used and the details of that use are the responsibility of the public authority concerned.

Article 9 of Directive 2003/98/EC holds that “(m)ember States shall ensure that practical arrangements are in place that facilitate the search for documents available for re-use, such as assets lists, accessible preferably online, of main documents, and portal sites that are linked to decentralised assets lists.“ In this respect the German Federal Ministry of Economics and Technology soon after the legislation’s enactment made reference to a number of portals.<sup>22</sup> These references were replaced by a more general reference to Bund Online but this too is no longer available.

Important too is the observation that the IWG makes no specific reference to publication obligations or duties on the part of the public authorities nor makes any reference to information directories. § 4 IV IWG does refer to General User Conditions (Nutzungsbestimmungen), General Re-Use Tariffs (Entgelte) as well as Fees (Gebühren) stating that they should be made available electronically, where this is possible. (This is a weak form of obligation).

The Explanatory Notes (Begründung) to the IWG took the view that “no or very little implementation within the Federal Authorities would be required”.<sup>23</sup> The Explanatory Notes refer instead to § 11 I 1 IFG under which the Federal Authorities are required to maintain directories (Verzeichnisse führen) out of which the existing information collection / compilation / corpus (Sammlung) and its purpose (Zweck) may be determined.

Hence, § 11 IFG already an important legal provision in the practical implementation of the Federal Freedom of Information Act in Germany, potentially plays a key role in the implementation of the „practical arrangements“ as understood by Article 9 of the PSI Directive.

In other words PSI re-use legislation in Germany is largely dependent on freedom of information legislation not just for the rights of access but also as a driver for public sector information management. In practice however, this has not been the case.

### **1.5. Exclusive Agreements in Germany**

The aim of the study is to assess the existence of possible exclusive agreements in Germany. This section briefly considers some cases or scenarios in Germany often discussed where exclusive arrangements are under consideration.

Now promoted as “Das Rechtsportal” or “The Legal Portal”, juris GmbH used to be marketed as the official German legal information system. Initially a research project under the Federal

---

<sup>22</sup> For example, a legal information portal ([www.justiz.de](http://www.justiz.de)), a company registry information portal ([www.handesregister.de](http://www.handesregister.de)) and geographic information portals ([www.geodatenzentrum.de](http://www.geodatenzentrum.de) and [www.geoportal.bund.de](http://www.geoportal.bund.de)).

<sup>23</sup> Begründung zum IWG, BT-Drs. 16/2453, Seite 10.

Ministry of Justice, the juris service was commercialised in 1985. In 2001 juris GmbH was partially privatised, 45.33% of the company going to Sdu nv in the Netherlands.

The official status and authority of the **legal information** in juris is guaranteed by its supply from public sector bodies, most notably the document centres of the courts. In an arrangement concluded some years ago and referred to as the “Bundesvertrag”, juris GmbH received information on an exclusive basis from the courts as well as from the Federal Ministries. In return for a fixed payment juris GmbH also made the juris service available to public authorities for no extra direct charge. In this way, juris GmbH, although a fully fledged commercial organisation has been providing access to legal information akin to that of a public service.

The practical outcome of the operation of the Bundesvertrag was that it set up an exclusive agreement with respect to the access and re-use of case law and Federal legislation. The MICUS 2008 study conducted between January and July 2008 recorded at least two clear cases of the existence of an exclusive agreement. One case involved a request to access and re-use Federal legislation. The other involved a request to access and re-use court decisions from a senior court in Bavaria. In both instances the requesting organisation or person was referred to juris GmbH.

The need to comply with the PSI Directive and in particular to terminate exclusive agreements by the 31<sup>st</sup> December 2008 was already being discussed by juris GmbH in the 2006 Reports Concerning the Business (Geschäftsbericht) that accompany the Annual Accounts. That juris GmbH has taken action in this respect is indicated by the fact that the same request - submitted again in 2009 - to access and re-use Federal legislation mentioned in the previous paragraph was approved by the public sector body to whom the request had been submitted.

Although in the past juris was often cited as an a poor example of implementing the spirit of the PSI Directive it is significant that in 2009 juris GmbH has become a member of the Initiative D21.<sup>24</sup> In September 2009 juris GmbH has also become a member of the IWG-Netzwerk e.V. These minor yet important developments can be interpreted as an effort on the part of the commercial leadership of juris GmbH to embrace a PSI friendlier agenda. There is a collective dissatisfaction concerning juris GmbH’s “quasi public service / quasi commercial” role. Yet, the resistance to change seems to be from the judges of the senior courts rather than from the Federal Ministry of Justice.

The situation with respect to juris GmbH is cited here as a long-standing and very public example of the ambiguity and uncertainty in both the legal situation and political direction regarding PSI developments in Germany.

This ambiguity and uncertainty is also seen in other markets relying on the re-use of public sector information, for instance in the **business information** sector. The MICUS 2008 study also demonstrated that some public sector bodies do not consider themselves to be covered by the prevailing law. For example, the Federal Office of Justice (Bundesamt für Justice) which is a sub-unit of the Federal Ministry of Justice, oversees the collection of annual financial statements one of the most valued sources of PSI. Empowered to do so by legislation, the Federal Office of

---

<sup>24</sup> See <http://www.initiaved21.de/ueber/struktur/mitglieder>

Justice has delegated the collection function and with it the compliance check to its appointed “Administrative Helper” (Verwaltungshelfer) the Bundesanzeiger Verlag. The Bundesanzeiger Verlag is a wholly owned private undertaking mandated to act in a public sector capacity. In its response to the MICUS 2008 study the Federal Office of Justice, despite being a PSB responsible for collecting public sector information, stated that it was not covered by the provisions of the IWG.

Turning to another market sector, namely **geoinformation**, the German Association of Cartographic Publishers in February 2008 requested information from 15 Federal State Survey Authorities regarding their compliance with the PSI Directive and the German implementing legislation, the IWG. The answers given by the public authorities showed that they were well aware of the PSI Directive and the IWG and following that, of their compliance requirements. However, the Federal State Survey Authorities took the view that with respect to their own activities regarding the commercial production of maps for leisure activities the law was not applicable to them. This was because specific laws, most notably Federal State Survey Laws explicitly defined the production of cartographic material as a public task and this applied by extension to the production of maps for leisure activities and commercial sale.

In the market place for **meteorological information** the German Weather Service (Deutscher Wetterdienst – DWD) has also come in for criticism. The German Association of Weather Service Providers (Verband Deutscher Wetterdienstleister – VDW) laments that “...in Germany, no established body is able to oversee the commercial and licensing practices of the DWD and to guarantee non-discrimination and fair market conditions.”<sup>25</sup>

While the examples of the Association of Cartographic Publishers and the complaints of the VDW are only peripherally connected to the possible existence of exclusive agreements they serve to illustrate the complexity and confusion of the legal and political situation in Germany surrounding PSI re-use. This is a *de facto* state of affairs illustrated more concisely by the fact that in one of Europe’s biggest markets for legal information, there are no legal commentaries on the DWD-Gesetz<sup>26</sup> of 1998 nor on the IWG of 2006.

The examples discussed above are indicators of the PSI re-use climate in Germany within which the IPEAG 2010 Project was carried out.

## 1.6. Survey of Potential Exclusive Agreements in Germany

In accordance with its Communication of the review of the PSI Directive, the European Commission decided to launch a study for assessing the existence of possible exclusive agreements concluded by public sector bodies (PSBs) in Germany. Such agreements, often the legacy of arrangements made prior to the advent of the internet and to government programmes modernising the public administration, are as a rule prohibited by the Directive 2003/98/EC on the re-use of public sector information (PSI Directive). Exclusive agreements are regarded as

---

<sup>25</sup> See MICUS 2008 study, page 63.

<sup>26</sup> Gesetz über den Deutschen Wetterdienst (DWD-Gesetz) vom 10. September 1998 (BGBl. I S. 2871), das zuletzt durch Artikel 10 des Gesetzes vom 29. Juli 2009 (BGBl. I S. 2424) geändert worden ist.

substantial inhibitors on the re-use of public information which, in turn, is aiming to produce innovative products and services that increase productivity and drive economic growth and employment.

The purpose of the study is to collect relevant information from the public and the private side of the German PSI Market (Supply and Demand) on the potential existence of exclusive agreements (EA) in the light of Article 11 of the PSI Directive. **GEOkomm – Association of the GeoInformation Industry Berlin/Brandenburg (GEOkomm - Verband der GeoInformationswirtschaft Berlin/Brandenburg e.V.)**, one of Germany's leading Associations in the geoinformation sector, was appointed by the European Commission to carry out a study in 2010 leading to the Identification of Potential Exclusive Arrangements in Germany.<sup>27</sup> The other partner in the consortium is **Online Consultants International GmbH**.

---

<sup>27</sup> Notification to Dr. Peter A. Hecker, GEOkomm e.V., from 23rd November 2009. Ref. INF/SO/E HF/PB/so D (2009) 146897.

## 2. THE IPEAG 2010 SURVEY

This part of the Final Report gives a comprehensive but concise description of the work done with respect to the IPEAG 2010 Project. The section opens by describing the study's requirements and methodology. There then follows a short account outlining the considerations and criteria with which the information market domains were selected as the selection of the information domains was discussed at length in the Inception Report.

This section continues by describing the work done and means employed in the data acquisition phases for both the supply and demand side of the PSI markets. After providing a systematic account of the study's results, both quantitatively and qualitatively, this part of the Final Report concludes by listing the agreements that could be construed as exclusive agreements as understood according to § 3 IV of the German Information Re-use Law and thereby an infringement of Article 11 of the Directive 2003/98/EC.

### 2.1. Requirements of the Study

As specified by the Tender documentation of 16th September 2009<sup>28</sup> the Contractor was required to identify the information market domains whose stakeholders are to be the actual targets of the study. The Contractor had to focus on those public sector bodies whose PSI repositories have the greatest PSI re-use potential (GI, meteorological, car and business registries information), and those areas where exclusive arrangements have taken place in the past.<sup>29</sup> Once compiled the list of selected information market domains had to be approved by the Commission.

The Tender documentation sets out a minimum number of respondents to be acquired for each group of stakeholders, namely 150 PSI holders and 300 PSI re-users. Data had to be acquired from these stakeholders by means of a questionnaire using both conventional print-based as well as electronic means such as Web-based surveys where such would be appropriate.

From the results and their subsequent analysis, the study had to identify the existence of potential exclusive agreements as understood according to § 3 IV of the German Information Re-use Law and thereby an infringement of Article 11 of the Directive 2003/98/EC.

### 2.2. Methodology of the Study

For the purpose of determining project work packages and their constituent tasks the IPEAG 2010 Project identified a series of key objectives that were subsequently divided into a primary objective and three secondary objectives.

---

<sup>28</sup> Public Sector Information (PSI): Identification of potential Exclusive Agreements – Germany, GEOkomm Tender – Invitation to negotiate – 20th October 2009.

<sup>29</sup> See section 1.5 above.

**Primary objective:**

- To systematically assess the existence of exclusive agreements in Germany and to provide a channel for compliance and the introduction of corrective measures.

**Secondary objectives:**

- To inform public authorities as to their compliance requirements under the PSI Directive;
- To determine the views of re-users with respect to possible exclusive agreements;
- To raise the awareness of PSI re-use in Germany.

The objectives were fulfilled through a series of coordinated, interlocking activities which started following signature of the Contract. These activities were based around a planned series of concurrent activities which were spread over 3 interlocked stages or phases: **Preparation, Execution and Analysis** and **Results**.

**Phase 1 - Preparation**

The preparation phase consisted of work packages designed to inform and sensitise the stakeholders in the study.<sup>30</sup> Extensive use was made of the networking opportunities provided by public and private sector professional associations. A critical aspect of this initial phase and a proscribed deliverable in the Inception Report was the determination and approval of the information market domains.<sup>31</sup> The activities in the relevant task were guided by domain selections from other previous PSI re-use related reports such as the PIRA, MEPSIR and MICUS reports<sup>32</sup> as well as the list of domains initially used (but no longer available) by the German Federal Ministry for Economics and Technology. Phase 1 concluded with the drafting and preparation of the questionnaires for PSI holders<sup>33</sup> as well as PSI re-users.<sup>34</sup> In the drafting of the questionnaires, special attention was given to those versions used already in the exclusive agreements studies carried out in the UK in 2008 and the Netherlands in 2006. External quality control of the PSI holder questionnaires and the four PSI re-user questionnaires were provided by the Brandenburg Ministry of Finance and company Recht für Deutschland GmbH respectively.

**Phase 2 - Execution and Analysis**

The execution and analysis phase involved issuing an electronic version (PDF file) of the PSI holder questionnaire to PSI holders. The public sector bodies (PSB) targeted in this phase were from Federal, Federal State as well as municipal public bodies where relevant. The PSBs were selected on the basis of their status as key PSI stakeholders in their respective information

---

<sup>30</sup> Detailed background information explaining the issues concerning exclusive agreements was put up on the IPEAG 2010 Project area of the GEOkomm website. See [http://www.geokomm.de/index\\_1987\\_de.html](http://www.geokomm.de/index_1987_de.html). The materials used are included with this report as Annex 1.

<sup>31</sup> The Inception Report is included with this report as Annex 2.

<sup>32</sup> See below section 2.4 for a fuller discussion and references.

<sup>33</sup> A copy of the questionnaire and accompanying materials sent to PSI holders is included with this report as Annex 3.

<sup>34</sup> Copies of the four separate web survey questionnaires targeted at PSI re-users are included with this report as Annex 4.

**Public Sector Information (PSI):****Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

markets domains following the recommendations given in the Inception Report.<sup>35</sup> The electronic version of the PSI holder questionnaire was also available as a direct download from the GEOkomm website along with explanatory and comprehensive background materials. The PSI holder questionnaire was sent Federal and Federal State bodies but the general response was unsatisfactory for reasons described in section 2.6. below.

The survey aimed at the PSI re-users (i.e. the supply side) was scheduled to follow a similar pattern. However, in practice this proved difficult. The IPEAG 2010 Project Team had to reconsider how best to complete the Project's primary objective as stated above, namely "to systematically assess the existence of exclusive agreements in Germany and to provide a channel for compliance and the introduction of corrective measures." And, to do so given both the available resources and the challenge of identifying potential respondents able to provide a meaningful response relevant to the German PSI re-user market which itself at first glance appears to lack form and structure.

The problems encountered were threefold. Firstly, PSI re-users *per se* proved difficult to actually isolate and identify for the purpose of the study. Secondly, those PSI re-users who were willing to cooperate in the study usually needed an extensive explanation of the issues surrounding exclusive agreements before they were able, let alone willing, to make a judgement on the part of their organisation. Thirdly, the study's endeavours indicated that there is, in Germany at least, a considerable reluctance to complete discursive questionnaires regardless of whether they are in a printed or electronic (PDF) or Web-based format. Reacting to this the Web-based surveys had to be redrafted. In the course of this process it was also decided to construct a separate questionnaire for each of the four information domains being targeted, namely

- Legal information
- Business information
- Weather information
- Geoinformation

In order to cover as much ground as possible in the time allocated and to ensure an acceptable level of evidential value, extensive use was made of the professional associations serving the private sector. The questionnaires were subsequently made available via the GEOkomm website and were open for a period of up to 5 weeks for completion. In addition the representatives of the professional organisations were asked where appropriate to complete the questionnaires on behalf of their members.

In a series of targeted telephone follow-ups the representatives of these professional organisations were also contacted to verify the Project Team's own assessments. This step was also necessary as in many cases companies are still reluctant to provide answers to such questionnaires on the grounds that the information is confidential. Nevertheless they are often willing to exchange information in a personal telephone call.

---

<sup>35</sup> See IPEAG 2010 Inception Report, 11<sup>th</sup> January 2010, Section 2.8.

### Phase 3 - Results

From the survey results and analysis the IPEAG 2010 Project Team were able to compile a summary country report giving an assessment of the existence of possible exclusive agreements for Germany and to characterise their nature. The results are discussed in depth in sections 2.4. and 2.5. following the next section which deals with the Inception Report and the selection of Information market domains.

### Overview of the IPEAG 2010 Project Work Packages

An overview of the phases and their respective work packages are given in the table below.

<b>IPEAG 2010 Project Work Packages by Phase, Sequence and Title</b>		
<b>Phase:</b>	<b>Sequence:</b>	<b>Title:</b>
<b>1. Preparation</b>	1	Determination of information market domains
	2	Awareness building and sensitisation of stakeholders
	3	Preparation of PSI Holder and PSI Re-user questionnaires
<b>2. Execution &amp; Analysis</b>	4	Survey of PSI Holders
	5	Analysis of the survey results for PSI Holders
	6	Survey of PSI Re-users
	7	Analysis of the survey results for PSI Re-users
<b>3. Results</b>	8	Report writing and submission of deliverables

Table 2: Overview of the work packages involved in the implementation of the IPEAG 2010 Project.

## 2.3. The Inception Report and Selection of Information Market Domains

A formal deliverable required by the Tender, the Inception Report gave details of the activities that organised into Work Packages implemented the project's objectives and produce the required outcome.

The Inception Report had also to identify the information market domains whose stakeholders would be the actual targets of the study. The Contractor was required to focus on those PSBs whose PSI repositories have the greatest PSI re-use potential. Suggested information market domains included geoinformation, meteorological, car and business registries information. The IPEAG 2010 Inception Report considered the question in detail as the work done and resulting outcome would be critical to the overall success of the study. After all behind a "simple list" of information market domains effectively lies a conceptual map (formed, well-formed or otherwise) of PSI use as well as re-use in Germany.

### 2.3.1. Approach to the Selection of Information Market Domains

The Inception Report discussed at length the information market domain classification schemes used by previous studies,<sup>36</sup> most notably the PIRA (2000), MEPSIR (2006), MICUS (2008) studies as well as a list of information market domains published by the German Federal Ministry of Economics and Technology (2006) as part of its response to Article 9 of the PSI Directive. The review considered specifically the suitability of the classification schemes for the German information market.

The Inception Report's conclusion is that Germany lacks a contemporary conceptual framework embracing the use and re-use of public sector information in which the various stakeholders can orientate themselves and interact with each other. The partial or domain specific frameworks that seem to exist have been described to a large extent using classification schemes from pan-European English language or UK commissioned studies. Only a few German PSI stakeholders can find themselves in these reports. The vast majority of PSI stakeholders in Germany are still unable to orientate themselves in the ongoing discussions. In other words the largely imported information market domain classification schemes fail to constructively reflect the German administrative world and business environment.

On this basis the Inception Report argued for an alternative approach based on a systematic view of the information market domains that

- finds reference points in the German public administrative system;
- connects information types with the PSBs that produce them;
- acknowledges the specific attributes of different information types;
- complements and builds upon earlier information classification schemes.

---

<sup>36</sup> See Inception Report, pages 11 to 17.

One of the insights from the analysis is that the two sides of the PSI re-use community do not use the same terminology when describing data sets. Further that a lot of PSI market literature relates to the re-user side of the market and hence uses re-user orientated terms and phrases. A noticeable difference here is that re-user orientated terms and phrases used to describe PSI data sets and the PSI market as a whole tend to be coloured by intention. For example, a data set is classified on the basis of what the re-user is going to do with it i.e. business information, rather than what it is i.e. company registration data.

### 2.3.2 Assumptions Made for the Supply Side

In order to move towards an alternative approach for the classification of information domains in Germany two assumptions were made for the institutions and organisations that constitute the supply side.

Firstly, that **public sector bodies perform public tasks** for which they have a **legal mandate** and thereby **generate information** which can in turn be accessed and re-used by third parties. On the basis of this assumption it was possible to isolate three verifiable elements, i.e. A. Public Sector Bodies (PSB); B. Public Tasks and C. Legal Frameworks whose collective interaction yields a specific type of public sector information, D.. The three elements A., B., and C. can be relatively easily located in the German public administration. Using the idea of establishing a specific location through the triangulation of different coordinates as understood again by the early cartographers, the “triangulation” of these three elements A., B. and C. yields PSI in the form of data sets D.

Secondly, the review assumed that **effective government** requires that **government agencies** are able **to identify people, organisations, objects, things and topics** that constitute the fundamental elements of the community. According to this assumption people, organisations, objects, things and topics can be regarded in terms of being top level domains. In German these key domains can be rendered as follows;

- **Personen (P)** - refers to verifiable, material objects namely people.
- **Organisationen (O)** – refers to people grouped in systematic, verifiable structures.
- **Gegenstände (G)** – refers to verifiable, locatable material objects.
- **Sachen (S)** – refers to immaterial objects, topics and matters.

These two assumptions are seemingly broad in their own right, yet fused together they provide a means of connecting information types with public sector bodies in a systematic way which facilitates discovery and knowledge acquisition of the German market for PSI re-use.

For instance, types of PSI mapped out against the high level classification involving people, organisations, objects, things and topics indicates a classification scheme as shown in the graphic below. The diagram indicates that PSI identifying people and things tends to lie within registers held by specific public bodies and be subject to specific legal frameworks. On the other hand PSI that concerns subjects and topics tends to be held by a variety of public sector bodies and less restrained in terms of access and re-use by specific legislative provisions.

#### **Public Sector Information (PSI):**

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

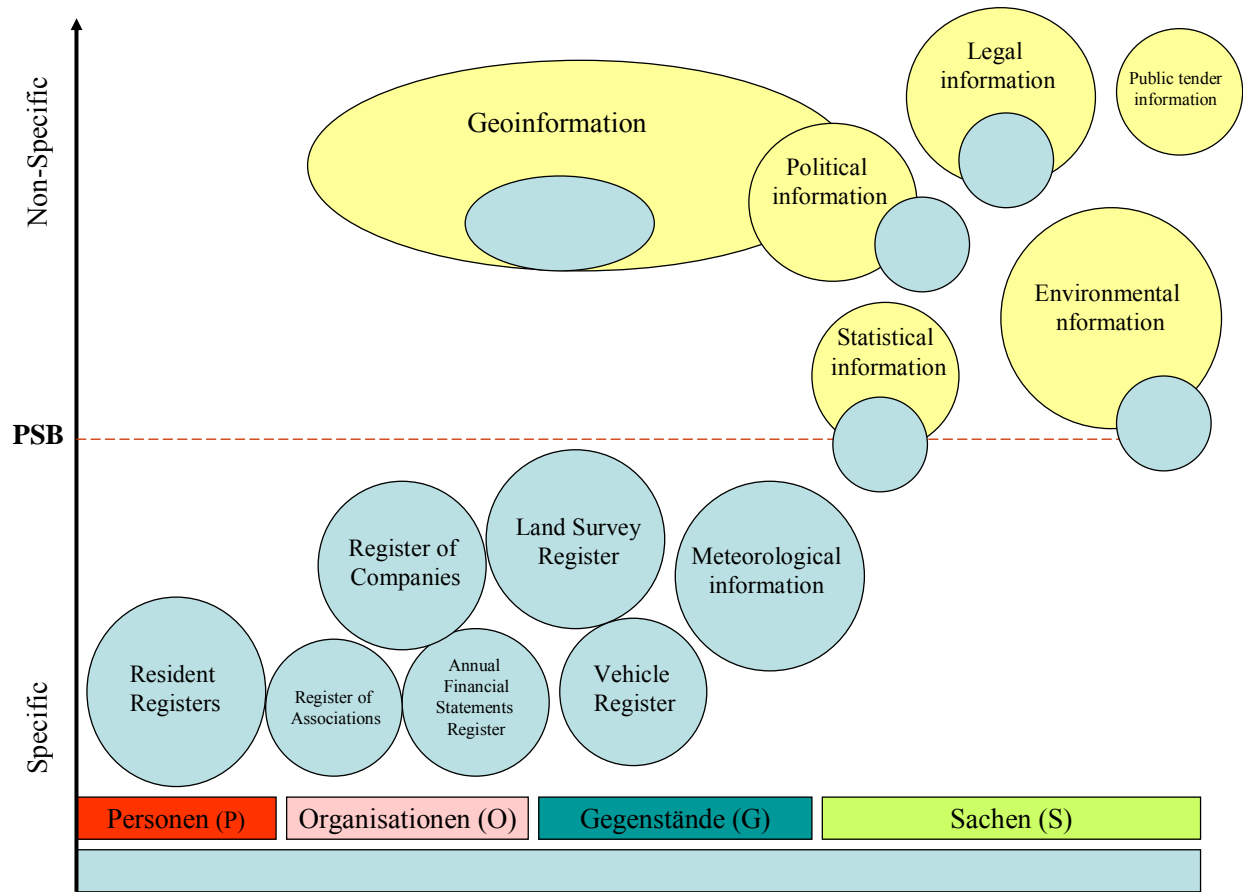


Figure 1: Diagram contrasting PSI sources available from dedicated as opposed to non-specific PSBs.

The outcome of the review had practical consequences in terms of identifying PSBs as well constructing the PSB questionnaire. For example, holders of company registry information and land survey information could only be the local courts and Federal State Survey offices respectively.

In contrast holders of statistical information could be the Federal and Federal State statistical information offices as well as any other government organisation. Equally, holders of environmental information could be any public body and not just the Federal and Federal State Ministries for the Environment. The review reinforced the lack of linear relationships between PSBs and PSI and the questionnaires needed to reflect this.

### 2.3.3 Assumptions Made for the Demand Side

The lack of linear relationships regarding PSI re-use was also considered for the demand side. Here the questionnaires needed to consider that many PSI re-users procure a selection of PSI for their products and services. It would for example be misleading to assume that geoinformation re-

use companies like Inframation AG only re-use geoinformation. The Inception Report gives an example where the **Unternehmensspiegel 2010** published by **Business Geomatics**<sup>37</sup> an authoritative source of news and analysis regarding the market for spatial data in Germany, lists 59 sub-domains that constitute the entire spatial information market. The sub-domains vary from construction and planning to traffic management to the environment, software use and development! Yet, of the 75 companies listed in the Unternehmensspiegel 2010 only two companies gave a single category as the area of geoinformation that they were involved in.

The practical consequence is that companies, traditionally associated with geoinformation re-use are likely to have an opinion on exclusive agreements with respect to address management (PSB: Resident Register Offices) as well as geobasis data (PSB: Land Survey Registers). Others will have an opinion concerning exclusive agreements with respect to address management (PSB: Resident Register Offices), property value assessments (PSB: Local Survey and mapping Agency) as well as information gleaned from geodata portals (PSB: Federal Office for Cartography and Geodesy).

Also, the questions as portrayed in the PSI re-user questionnaire had to additionally take into consideration that there is also no smooth correlation between the type of PSI a re-user obtains and the products and services of which it becomes a part.

In other words terms such as “business information” need to be qualified. In the example given in the Inception Report, “business information” could be made up of Resident Register Information as well as company register information – two completely different types of public sector information. However, merged they are the key information assets behind credit rating services.

In order to avoid ambiguity in this respect the study opted to see the supply of PSI directly from the PSBs as the base line in the PSI re-use market and what re-users do as consequential. Taking a cue from the computing industry, it was then possible to talk in terms of **a layered architecture of PSI re-use**.

The base is provided by the PSI data sets (holding layer) which are in turn a product of the interaction between a public body, their mandated public task and the relevant legal framework (origin layer). Out of these two layers emerges a community of re-users (re-use layer) driven by the products and services wished for by end-user (end-use layer).

The benefit to the IPEAG 2010 Project of this analysis was that re-users were sought in terms of being end-users of PSI as opposed to re-users. So for example acknowledging that PSI is an integral part of credit rating services helped identify a verifiable group of players in this field. In order to better understand the relationship between re-use and end use, PSI re-user questionnaire organisations were asked to give the type of PSI they have procured for re-use (i.e. layer 3) as well as indicate the resultant end-use (i.e. layer 4). In the study the end-use could only be determined in a generic sense as it would have detracted from the core questions. Nevertheless, the inclusion in the questionnaire acted as a control.

---

<sup>37</sup> See <http://www.business-geomatics.com> in particular the print version, Ausgabe 12/09, 14. Dezember 2009.

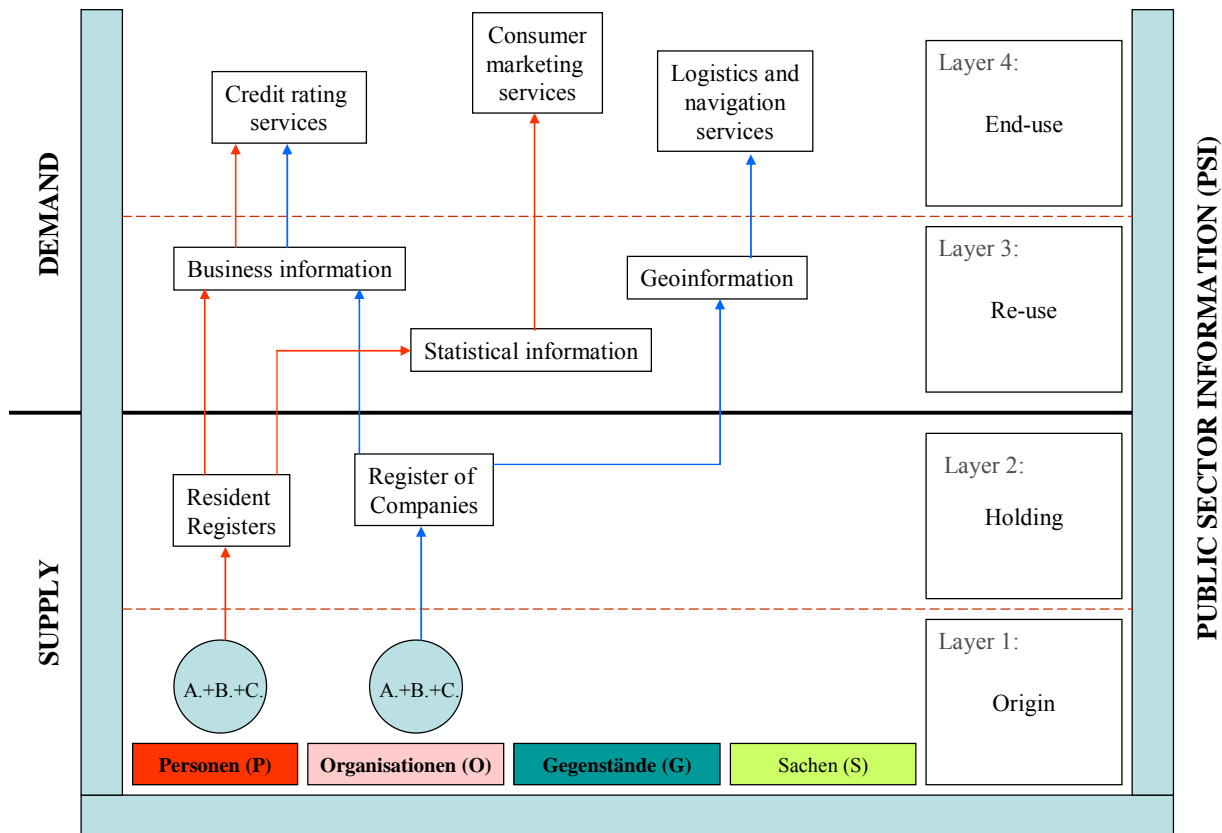


Figure 2: Diagram indicating the key elements of the layered architecture model of PSI re-use.

### 2.3.4. The Domains selected for the IPEAG 2010 Study

On the basis of the in depth analysis of the classification of the German market for PSI use and reuse the following domains were recommended,

- Resident Registers
- Register of Companies and Associations
- Land Survey Registers
- Vehicle Register
- Meteorological information
- Political information
- Legal information
- Statistical information
- Environmental information
- Geographical information

While on the surface the list may not seem so different from those in the reviewed reports, the detail manifested itself in the questionnaires and the way in which they were constructed.

## 2.4. Data Acquisition and Assessment – Supply Side

On the basis of the analysis as outlined above and described in more detail in the Inception Report the IPEAG 2010 Project identified groups of PSBs to whom the PSI holder package was sent.

The PSI holder package consisted of an introductory letter in German from the European Commission, a personal letter from the Chairman of the Board of Directors of GEOkomm e.V., together with a three page questionnaire asking respondents to answer three straightforward questions.<sup>38</sup>

The GEOkomm introductory letter also encouraged respondents to consult the background and explanatory materials that had been put on the GEOkomm website. The names and contact details of two members of the IPEAG 2010 Project team were also given and respondents invited to call should they need assistance.

Given the size of the public sector bodies being approached it was always necessary to focus on a PSB in the context of a certain type of public sector information. With this in mind the PSB groups were selected following the influence of the insights gained from Figure 1. Hence for example, specific PSBs like the Senior Federal State Courts and the Federal State Ministries for the Environment were approached with respect to their respective legal information and environmental information PSI holdings. In contrast a wide variety of Federal Ministries were approached with respect to the statistical information they held in the form of publications, documents, reports, analysis etc. .

The questionnaires (or their equivalent – some respondents sent simple but nevertheless still useful replies in the form of e-mail messages and letters) were collected and analysed.

---

<sup>38</sup> See Annex 3 at the end of the Final Report.

## 2.5. Data Acquisition and Assessment – Demand Side

### 2.5.1. Overview

On the basis of the analysis as described in the Inception Report, the information types were mapped onto products and services identifiable within a community of PSI re-users and their customers. In order to ensure reliability and evidential value of the resultant information the community was based – where possible – around trade and professional organisations representing the interests of PSI re-users. This section gives the results for the information domains, end-use products and services and information domain community for each of the four information domains being targeted:

- Legal information
- Business information
- Weather information
- Geoinformation

### 2.5.2. Information Domain – Legal information

#### Legal Information - Information Types

In order to be classified as a re-user of legal information, the target organisations had to involve in their products and services at least one of the types of legal information from the public sector as listed below. The table below gives an indication of the categories of legal information considered in the re-user questionnaire as well as an indication of their spread across the target group.

	English	German	Spread
<b>Public Sector Information Type</b>	<ul style="list-style-type: none"> <li>• Legislation</li> <li>• Administrative regulations</li> <li>• Official instructions</li> <li>• Official notices</li> </ul>	<ul style="list-style-type: none"> <li>• Gesetzgebung und Verordnungen</li> <li>• Vorschriften</li> <li>• Amtliche Anweisungen</li> <li>• Amtliche Bekanntmachungen</li> </ul>	<ul style="list-style-type: none"> <li>13%</li> <li>13%</li> <li>12%</li> <li>10%</li> </ul>
Layer 3	<ul style="list-style-type: none"> <li>• Drafts of legislation</li> <li>• Explanatory notes to legislation</li> <li>• Court decisions</li> <li>• Tribunal / Other PSB decisions</li> <li>• Parliamentary proceedings</li> <li>• Statistical information</li> </ul>	<ul style="list-style-type: none"> <li>• Gesetzesentwürfe</li> <li>• Gesetzesbegründung</li> <li>• Rechtsprechung</li> <li>• Entscheidungen öffentlicher Stellen</li> <li>• Parlamentarische Informationen</li> <li>• Statistische Informationen</li> </ul>	<ul style="list-style-type: none"> <li>11%</li> <li>10%</li> <li>13%</li> <li>12%</li> <li>4%</li> <li>1%</li> </ul>

Table 5: List of the legal information categories considered and their relative distribution.

### Legal Information - End-use Products and Services

Equally, the types of products and services were considered for each organisation considered. The table below gives an indication of the generic categories of products and services based on the re-use of legal information as well as an indication of the spread across the target group.

	English	German	Spread
<b>Generic Products and Services</b>	<ul style="list-style-type: none"> <li>• Publications</li> <li>• Databases</li> <li>• Software application</li> <li>• Consultancy services</li> </ul>	<ul style="list-style-type: none"> <li>• Veröffentlichungen</li> <li>• Datenbanken</li> <li>• Software Anwendungen</li> <li>• Beratungsdienstleistungen</li> </ul>	32% 33% 32% 2%
Other	Training services	Seminare und Schulungen	

Table 6: Indication of the legal information market product and services based on PSI re-use and their relative distribution.

### Legal Information - Information Domain Community

The target community of legal information re-users is for the most part made up of legal publishers, the majority of whom in Germany are members of the **Association of Legal Publishers in Germany (ARSV)**. The table below indicates the major associations and companies that comprise the market for legal information in Germany.

	English	German
Professional and Trade Associations	Association of Legal Publishers in Germany (ARSV)	Arbeitsgemeinschaft der rechts- und staatswissenschaftlichen Verlage e.V. (21) <a href="http://www.juristische-verlage.de/">http://www.juristische-verlage.de/</a>
Companies	juris GmbH  Recht für Deutschland GmbH  Schweitzer Fachinformationen  Sack Mediengruppe	juris GmbH <a href="http://www.juris.de">http://www.juris.de</a> (1) Recht für Deutschland GmbH (1) <a href="http://www.recht.makrolog.de">http://www.recht.makrolog.de</a> Schweitzer Fachinformationen (1) <a href="http://www.schweitzer-online.de">http://www.schweitzer-online.de</a> Sack Mediengruppe (1) <a href="http://www.sack-mediengruppe.de/">http://www.sack-mediengruppe.de/</a>

Table 7: List of the major trade and professional organisations in the German legal information market.

Given the characteristics in the market already described in the MICUS report a distinction was made between legal publishers and legal information providers where appropriate.<sup>39</sup> A third distinction was that of the legal book suppliers. The main networks in this respect are Schweitzer Fachinformationen and the Sack Mediengruppe both of whom are large enough and self sufficient enough to procure legal information directly from the original public sector source.

---

<sup>39</sup> See MICUS (2008) report, section 5.1.5.

### 2.5.3. Information Domain – Business information

#### Business Information - Information Types

As with legal information, in order to be classified as a re-user of business information, the target organisations had to involve in their products and services at least one of the types of business information from the public sector as listed below. The table below gives an indication of the categories of business information considered in the re-user questionnaire as well as an indication of the spread across the target group.

	English	German	Spread
<b>Public Sector Information Type</b>	<ul style="list-style-type: none"> <li>• Address information</li> <li>• Trade Register Information</li> <li>• Annual Financial Statements</li> <li>• Legislation / Admin. regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Adressinformationen</li> <li>• Daten aus dem Handelsregister</li> <li>• Jahresabschlüsse</li> <li>• Gesetzgebung / Vorschriften</li> </ul>	18%
Layer 3	<ul style="list-style-type: none"> <li>• Official instructions</li> <li>• Court decisions</li> <li>• Statistical information</li> <li>• Environmental information</li> <li>• Geoinformation</li> <li>• Traffic information</li> <li>• Building and Construction</li> <li>• Local authority information</li> </ul>	<ul style="list-style-type: none"> <li>• Amtliche Bekanntmachungen</li> <li>• Rechtsprechung</li> <li>• Statistische Informationen</li> <li>• Umweltinformationen</li> <li>• Geoinformationen</li> <li>• Verkehrsdaten</li> <li>• Bauordnungen</li> <li>• Informationen lokaler Behörden</li> </ul>	14%
			5%
			6%
			1%
			1%
			1%
			0%
			18%

Table 8: List of the business information categories considered and their relative distribution.

#### Business Information - End-use Products and Services

Equally the types of products and services were considered for each organisation considered.

	English	German	Spread
<b>Generic Products and Services</b>	<ul style="list-style-type: none"> <li>• Publications</li> <li>• Databases</li> <li>• Software application</li> <li>• Consultancy services</li> </ul>	<ul style="list-style-type: none"> <li>• Veröffentlichungen</li> <li>• Datenbanken</li> <li>• Software Anwendungen</li> <li>• Beratungsdienstleistungen</li> </ul>	36%
			35%
			14%
			15%

Table 9: Indication of the business information market product and services based on PSI re-use and their relative distribution.

## Business Information - Information Domain Community

As discussed earlier and in detail in the Inception Report the target community of business information re-users is large, spread out and encompasses numerous information domains. Nevertheless employing a networks (i.e. trade and professional association) focussed approach it was possible to isolate distinct groups whose dependency on PSI re-use can be regarded as high. First and foremost are the companies that rely on company information as the basis of products and services based around financial management services. The table below indicates the major associations and companies that comprise the market for company information in Germany.

Financial Management	English	German
Professional and Trade Associations	Federation of Business Information Services (FEBIS)	Arbeitsgemeinschaft der rechts- und staatswissenschaftlichen Verlage e.V. (3) <a href="http://www.febis.org">http://www.febis.org</a>
Companies	Bundesanzeiger Verlag	Bundesanzeiger Verlag (1) <a href="http://www.bundesanzeiger.de">http://www.bundesanzeiger.de</a>
	Bureau van Dijk Electronic Publishing GmbH	Bureau van Dijk Electronic Publishing GmbH (1) <a href="http://www.bvdep.com/de/index.html">http://www.bvdep.com/de/index.html</a>
	BÜRCEL Beteiligungs-GmbH	BÜRCEL Beteiligungs-GmbH <a href="http://www.buergel.de">http://www.buergel.de</a>
	BÜRCEL Wirtschaftsinformationen GmbH & Co.KG	BÜRCEL Wirtschaftsinformationen GmbH & Co.KG (60) <a href="http://www.buergel.de">http://www.buergel.de</a>
	CREDITREFORM, Verband der vereine e.V.	CREDITREFORM, Verband der vereine e.V. (130) <a href="http://www.creditreform.de">http://www.creditreform.de</a>
	databyte GmbH	databyte GmbH (1) <a href="http://www.databyte.de">http://www.databyte.de</a>
	D&B Deutschland GmbH	D&B Deutschland GmbH (5) <a href="http://www.dnbgermany.de">http://www.dnbgermany.de</a>
	GBI-Genios Deutsche Wirtschaftsdatenbank GmbH	GBI-Genios Deutsche Wirtschaftsdatenbank GmbH (1) <a href="http://www.genios.de">http://www.genios.de</a>
	Hoppenstedt Firmeninformationen GmbH	Hoppenstedt Firmeninformationen GmbH (1) <a href="http://www.hoppenstedt.de">http://www.hoppenstedt.de</a>
	SCHUFA Holding AG	SCHUFA Holding AG <a href="http://www.schufa.de">http://www.schufa.de</a>

Table 10: List of the major trade and professional organisations in the German business information market.

Another very distinct market segment belonging to the category of business information involves a group of companies that rely on data principally from telephone companies but also from local authorities to supplement their products and services. It is helpful here to recall that up until the deregulation of state telecommunications monopolies, this kind of data was also public sector information. This is an exceptionally active market segment in Germany. By way of illustration, out of some 180 members that make up the **European Association of Directory Publishers (EADP)** which is a member of the PSI Alliance, two members are from the Netherlands, 5 are from France, 6 are from the United Kingdom and 31 members are from Germany.

The German national professional association for this market segment is the **German Association of Information and Directory Media (VDAV)** which is also a member of the EADP. The table below indicates the major associations and companies that comprise the market for directory media and publishing in Germany.

Directory Publishing	English	German
Professional and Trade Associations	German Association of Information and Directory Media (VDAV)	Verband Deutscher Auskunft- und Verzeichnismedien e.V. (167) <a href="http://www.vdav.de/">http://www.vdav.de/</a>
Companies	The membership of the VDAV covers approximately 80% of the German market.	See the VDAV for a full list of its members.

Table 10a: List of the major trade and professional organisations in the German directory publishing market.

Similarly, another very distinct market segment that is usually grouped under the category of business information involves a group of companies whose predominant business activity is specialist or professional information publishing. They are being mentioned in the IPEAG 2010 Project as they strongly embrace cultural and scientific information that although not technically covered by Directive 2003/98/EC, is nevertheless highly sought after public sector information.<sup>40</sup>

News and Professional Information Publishing	English	German
Professional and Trade Associations	The Federation of German Newspaper Publishers (BDZV)  German Association of Magazine Publishers (VDZ)  Association of German Business Media	Bundesverband Deutscher Zeitungsverleger e.V. (BDZV) (266) <a href="http://www.bdzv.de/">http://www.bdzv.de/</a>  Verband Deutscher Zeitschriftenverleger e.V. (400) <a href="http://www.vdz.de">http://www.vdz.de</a>  Verein Deutsche Fachpresse (420) <a href="http://www.deutsche-fachpresse.de/">http://www.deutsche-fachpresse.de/</a>

Table 10b: List of the major trade and professional organisations in the German news and professional publishing market.

<sup>40</sup> For the concerns of the ARD-ZDF with respect to the PSI Directive see their 2008 submission to the EU (See Fn.6 above).

## 2.5.4. Information Domain – Weather Information

### Weather Information – Information Types

Similarly, to be classified as a re-user of weather information, the target organisations had to involve in their products and services at least one of the types of weather information from the public sector as listed below. The table below gives an indication of the categories of weather related information considered in the re-user questionnaire as well as an indication of the spread across the target group.

	English	German	Spread
<b>Public Sector Information Type</b>	<ul style="list-style-type: none"> <li>• Synoptic observations</li> <li>• Radar images</li> <li>• Weather predictions</li> <li>• Satellite images</li> </ul>	<ul style="list-style-type: none"> <li>• Synoptische Beobachtungen</li> <li>• Radarbilder</li> <li>• Wettervorhersagen</li> <li>• Satellitenbilder</li> </ul>	14% 10% 14% 8%
Layer 3	<ul style="list-style-type: none"> <li>• Legislation</li> <li>• Official notices</li> <li>• Court decisions</li> <li>• Statistical information</li> <li>• Environmental information</li> <li>• Geoinformation</li> <li>• Traffic information</li> <li>• Building and Construction</li> <li>• Local authority information</li> </ul>	<ul style="list-style-type: none"> <li>• Gesetzgebung, Verordnungen,</li> <li>• Amtliche Bekanntmachungen</li> <li>• Rechtsprechung</li> <li>• Statistische Informationen</li> <li>• Umweltinformationen</li> <li>• Geoinformationen</li> <li>• Verkehrsdaten</li> <li>• Bauordnungen</li> <li>• Informationen lokaler Behörden</li> </ul>	4% 9% 0% 9% 10% 7% 5% 5% 6%

Table 11: List of the weather information categories considered and their relative distribution.

### Weather Information - End-use Products and Services

As before the types of products and services were considered for each organisation reviewed.

	English	German	Spread
<b>Generic Products and Services</b>	<ul style="list-style-type: none"> <li>• Publications</li> <li>• Databases</li> <li>• Software application</li> <li>• Consultancy services</li> </ul>	<ul style="list-style-type: none"> <li>• Veröffentlichungen</li> <li>• Datenbanken</li> <li>• Software Anwendungen</li> <li>• Beratungsdienstleistungen</li> </ul>	22% 22% 22% 33%

Table 12: Indication of the weather information market product and services based on PSI re-use and their relative distribution.

#### Public Sector Information (PSI):

#### Identification of potential Exclusive Agreements – Germany GEOkomm IPEAG 2010 – Final Report – Autumn 2010

## Weather Information - Information Domain Community

Compared to the diverse business information community in Germany, the meteorological information community is more compact. The table below indicates the major associations and companies that comprise the market for weather information in Germany.

	English	German
Professional and Trade Associations	German Association of Weather Service Providers Association of Private Meteorological Services (PRIMET)	Verband Deutscher Wetterdienstleister (17) <a href="http://www.wetterverband.de/">http://www.wetterverband.de/</a> Association of Private Meteorological Services (PRIMET) <a href="http://www.primet.org">http://www.primet.org</a>
Companies	MC-Wetter GmbH WetterOnline GmbH VCS / SpaceCom	MC-Wetter GmbH (1) <a href="http://www.meteogroup.de">http://www.meteogroup.de</a> WetterOnline GmbH (1) <a href="http://www.wetteronline.de">http://www.wetteronline.de</a> VCS Engineering / SpaceCom (1) <a href="http://www.spacecom.vcs.de">http://www.spacecom.vcs.de</a>

Table 13: List of the major trade and professional organisations in the German weather information market.

## 2.5.5. Information Domain – Geo- and Environmental Information

### Geo- and Environmental Information – Information Types

Lastly in this section in order to be classified as a re-user of geo- or environmental information, the target organisations had to involve in their products and services at least one of the categories of geoinformation or environmental information from the public sector as listed below. The table below gives an indication of the categories of information considered in the re-user questionnaire as well as an indication of the spread across the target group.

	English	German	Spread
<b>Public Sector Information Type</b>	<ul style="list-style-type: none"> <li>• Cadastral information</li> <li>• Survey information</li> <li>• Topographic information</li> <li>• Aerial photography</li> <li>• Address information</li> <li>• Environmental information</li> <li>• Road information</li> <li>• Statistical information</li> <li>• Legislation and regulations</li> <li>• Official Bulletin / Notices</li> </ul>	<ul style="list-style-type: none"> <li>• Katasterinformationen</li> <li>• Vermessungsdaten</li> <li>• Topographische Informationen</li> <li>• Luftaufnahmen</li> <li>• Adressinformationen</li> <li>• Umweltinformationen</li> <li>• Verkehrsdaten</li> <li>• Statistische Informationen</li> <li>• Gesetzgebung und Verordnungen</li> <li>• Amtsblätter / Amtliche Bekannt.</li> </ul>	12% 9% 20% 12% 10% 4% 3% 5% 13% 13%
Layer 3			

Table 14: List of the geo- and environmental information categories considered and their relative distribution.

### Geo- and Environmental Information - End-use Products and Services

The types of products and services were considered for each organisation.

	English	German	Spread
<b>Generic Products and Services</b>	<ul style="list-style-type: none"> <li>• Publications</li> <li>• Databases</li> <li>• Software application</li> <li>• Consultancy services</li> <li>• Geodata</li> </ul>	<ul style="list-style-type: none"> <li>• Veröffentlichungen</li> <li>• Datenbanken</li> <li>• Software Anwendungen</li> <li>• Beratungsdienstleistungen</li> <li>• Geodaten</li> </ul>	16% 19% 19% 25% 22%

Table 15: Indication of the geoinformation market product and services based on PSI re-use and their relative distribution.

**Geo- and Environmental Information - Information Domain Community**

Like their peers in the other information market segments the companies that comprise the geoinformation community are a mixture traditional firms and start-ups, print based (cartography) as well as technologically (GIS based products and services) focussed. The table below indicates the major associations and companies that comprise the market for geo and environmental information in Germany.

Financial Management	English	German
Professional and Trade Associations	<p>GEOkomm e.V.</p> <p>German Association for Geoinformation e.V. (DDGI)</p> <p>InGeoForum</p> <p>Runder Tisch GIS e. V.</p> <p>German Society for Photogrammetry, Remote Sensing and Geoinformation</p> <p>Association of Cartographic Publishers in Germany</p>	<p>GEOkomm e.V. (39) <a href="http://www.geokomm.de">http://www.geokomm.de</a></p> <p>Deutsche Dachverband für Geoinformation e.V. (DDGI) (32) <a href="http://www.ddgi.de">http://www.ddgi.de</a></p> <p>InGeoForum (25) <a href="http://www.ingeforum.de/">http://www.ingeforum.de/</a></p> <p>Runder Tisch GIS e. V. (42) <a href="http://www.rtg.bv.tum.de/">http://www.rtg.bv.tum.de/</a></p> <p>Deutsche Gesellschaft für Photogrammetrie, Fernerkundung und Geoinformation e.V. (30) <a href="http://www.dgpf.de/neu/">http://www.dgpf.de/neu/</a></p> <p>Verband Kartografischer Verlage in Deutschland - VKViD e.V. (26) <a href="http://www.kartografie-verband.de">http://www.kartografie-verband.de</a></p>
Companies	See associations above.	
Other	GIW-Kommission of the Federal Ministry of Economics and Technology	GIW-Kommission (Bundesministerium für Wirtschaft und Technologie - BMWi) <a href="http://www.geobusiness.org">http://www.geobusiness.org</a>

Table 16: List of the major trade and professional organisations in the German geoinformation market.

## 2.6. Quantitative Results

### 2.6.1. PSI Holders – Supply Side

On the supply side, the IPEAG 2010 Project used an electronically delivered survey as the means of collecting information, to obtain data for 52 public sector bodies involving different types of public sector information across Federal as well as Federal State institutions. The respondents potentially represent over 150 similar public sector organisations. The table below gives a breakdown and distribution of the data received.

PSI Holder Survey Results			
Public Sector Body	Information Type	Actual Respondents	Potential Respondents
<b>Federal Level</b>			
Parliament	Political information	0	2
Ministries	Legal information / Legislation	7	19
<i>Subordinate departments</i>	Statistical information		
	Environmental information	4	25
Courts			
<i>Supreme courts</i>	Legal information / Decisions	3	7
<b>Federal State Level</b>			
Parliament	Political information	3	16
Ministries			
<i>Justice</i>	Legal information / Legislation	4	16
<i>Environment</i>	Environmental information	8	16
Courts			
<i>Senior Fed. State Courts</i>	Legal information / Decisions	3	24
Survey Offices	Land survey information	16	16
Statistical offices	Statistical information	4	16
<b>TOTAL</b>		<b>52</b>	<b>157</b>

Table 17: Overview of the PSI Holder survey data by public sector body.

Generally speaking the first responses to the IPEAG 2010 Project survey sent to public sector bodies were diligently completed. A few respondents even called the IPEAG 2010 Project Team to seek further clarification. However, the sheer diversity and inconsistency of the PSI holder's responses in even this relatively limited data set presented considerable problems for the Project Team. Unlike the supply side there were no meaningful patterns in the responses. Some examples will help illustrate this point:

#### Public Sector Information (PSI):

Identification of potential Exclusive Agreements – Germany  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

- **Court decisions are not regarded as PSI:** It would be reasonable to say that legal information and in particular court decisions are thought of as one of the more obvious types of public sector information. Whereas the responses from the Supreme Courts and the Federal State Senior Courts (Oberlandesgericht) of Koblenz and Frankfurt am Main supported this view, the equivalent Senior Court of the Federal State of Schleswig-Holsten indicated otherwise. This respondent answered the survey's first question about whether the PSB held information that could be the subject of a request for its re-use in the negative. Ironically, the Federal State of Hesse in which Frankfurt am Main lies does not have freedom of information legislation but Schleswig-Holstein does, as well as the only independent Commissioner for Data Protection and Freedom of Information.
- **Parliamentary information is not regarded as PSI:** Two of the three respondents from Federal State Parliaments also took the view that they did not hold information that could or would be the subject of a request for its re-use.
- **Legal instruments used to govern PSI re-use vary considerably:** Across all the respondents that stated they did indeed hold official information available for possible re-use, the legal frameworks given that would cover and govern re-use terms and conditions were as varied as there were respondents. The legal instruments ranged from Standard Terms and Conditions (AGB), to freedom of access legislation, to environmental regulations, to the German Federal legislation implementing the INSPIRE Directive, to specific provisions of the German Civil Procedure Law (Zivilprozessordnung - ZPO) as well as (surprisingly) data protection legislation.
- **PSB's claim not to be subject to the German Information Re-use Law:** A proportion of the respondents answered that they were not subject to the provisions of the German Information Re-use Law and so the questions posed by the questionnaire did not apply to them. For example, the Office for Geoinformation Affairs of the Germany Army, who wrote back saying they needed first to clarify the situation internally, subsequently replied that as a Federal research institution the information they held was subject to an exclusion clause applying to research information as provided for by § 1 II 6 IWG.<sup>41</sup>

Similarly, the Federal Ministry of Finance (BMI) took the view that it did not issue any further information other than that already made publicly available. The Federal Ministry for Education and Research (BMBF) took the view that they did not hold official information that would be subject to information re-use requests. This view was also shared by the Federal Ministry of Food, Agriculture and Consumer Protection (BMELV), the Federal Ministry that has been particularly active in challenging Google

---

<sup>41</sup> § 1 II 6 IWG states: "Dieses Gesetz gilt nicht für Informationen, die im Besitz von Bildungs- und Forschungseinrichtungen sind, einschließlich solcher Einrichtungen, die zum Transfer von Forschungsergebnissen gegründet wurden."

on data protection issues in the course of that company's development of the Google Street View product for Germany.<sup>42</sup>

- **Scarcely any use of PSI Directive terminology:** Most indicative of the respondents struggle to make sense of the subject matter of the survey was demonstrated by the language used in the responses. Although, the term “Weiterverwendung” literally meaning “re-use” is used explicitly in the German language version of the PSI Directive; in the German Information Re-Use Law (IWG) implementing Directive 2003/98/EC as well as in the Explanatory Notes accompanying the legislation, the term “Weiterverwendung” was hardly used by any of the respondents.

Instead, the public sector bodies used terms such as “Weitergabe” (dissemination or transfer) or “Weiterleiten” (to pass on or to forward) or “Vervielfältigung” (reproduction or duplication).

Even one of the Statistical Office respondents - in response to the first survey question concerning whether or not they held official information for potential re-use - replied that users could request analysis (Auswertungen) of official statistics at any time. The idea that some users may not want the processed information of the analysis but would prefer the raw data to perform their own analysis is not being even suggested in the language used.

**The general reaction to the PSI holder survey as well as the specific responses indicate a high degree of lack of awareness concerning PSI re-use issues as well as an enduring uncertainty about the applicable legal frameworks.** The linguistic observations are a small but telling detail, particularly given the fact that, by the end of this current year, the German Information Re-Use Law (IWG) will have been in force for 4 years.

---

<sup>42</sup> See [http://www.bmelv.de/cln\\_172/SharedDocs/Standardartikel/Verbraucherschutz/Internet-Telekommunikation/GoogleStreetview.html](http://www.bmelv.de/cln_172/SharedDocs/Standardartikel/Verbraucherschutz/Internet-Telekommunikation/GoogleStreetview.html)

## 2.6.2. PSI Re-Users – Demand Side

On the demand side the IPEAG 2010 Project, using web surveys as the means of collecting information, obtained data for 332 organisations, the clear majority being companies, whose products and services have a high dependency on being able to re-use information from the public sector. The table below gives a breakdown for the four information market under review.

PSI Re-user Web-based Survey Results		
English	German	PSI Re-user Web Survey Data
Legal information	Rechtsinformationen	27
Business information	Wirtschaftsinformationen	66
Weather information	Wetterinformationen	16
Geoinformation	Geoinformationen	223
<b>TOTAL</b>		<b>332</b>

Table 18: Overview of the PSI Re-user Web survey data by information market domain.

The following sets of tables break down the numbers given in Table 18 above according to the market segments respective information domain community.

### Legal Information - Outcome

Segment / Sub-segment	Market Segment Representative Organisation	Number of Contacts Included ( <i>Possible</i> )	Individual Organisation Contacts	Level of Contact
<b>Legal</b>				
Legal Publishers	ARSV	22 (22)		<ul style="list-style-type: none"> <li>▪ Senior Management</li> </ul>
Other			3	<ul style="list-style-type: none"> <li>▪ Senior Management</li> <li>▪ Business Development</li> </ul>
Legal Information Providers			1	<ul style="list-style-type: none"> <li>▪ Senior Management</li> <li>▪ Legal Department</li> </ul>
Other			2	<ul style="list-style-type: none"> <li>▪ Senior Management</li> </ul>
<b>TOTAL</b>		22 (22)	5	

Table 19: Overview of the PSI Re-user Web survey data for the legal information market.

**Business Information - Outcome**

Segment / Sub-segment	Market Segment Representative Organisation	Number of Contacts Included (Possible)	Individual Organisation Contacts	Level of Contact
<b>Business</b>				
Company and Business Information Provision	FEBIS	3 (22)		▪ Senior Management
	Bürgel	10 (61)		▪ Senior Management
	Creditreform	12 (125)		▪ Senior Management ▪ Sales and Marketing
Other			3	▪ Senior Management
Directory and Business Information Provision	VDAV	31 (31)		▪ Senior Management ▪ Product Development
Other			2	▪ Senior Management
News and Specialist Subject Publishers	Deutsche Fachpresse	2 (420)		▪ Senior Management
	VDZ	2 (400)		▪ Senior Management
Other			1	▪ Senior Management
<b>TOTAL</b>		60 (1,059)	6	

Table 20: Overview of the PSI Re-user Web survey data for the business information market.

**Weather Information - Outcome**

Segment / Sub-segment	Market Segment Representative Organisation	Number of Contacts Included (Possible)	Individual Organisation Contacts	Level of Contact
<b>Weather</b>				
Weather Information Provision	VDW	16 (16)		▪ Senior Management
Other			0	▪ Senior Management
<b>TOTAL</b>		16(16)	6	

Table 21: Overview of the PSI Re-user Web survey data for the weather information market.

## Geo- and Environmental Information - Outcome

Segment / Sub-segment	Market Segment Representative Organisation	Number of Contacts Included ( <i>Possible</i> )	Individual Organisation Contacts	Level of Contact
<b>Geoinformation</b>				
GIS / Geodata	GEOkomm	42 ( <i>42</i> )		▪ Senior Management
	DDGI	32 ( <i>51</i> )		▪ Senior Management
	InGeoForum	13 ( <i>34</i> )		▪ Senior Management
	Runder Tisch	29 ( <i>67</i> )		▪ Senior Management
	DGPF	39 ( <i>110</i> )		▪ Senior Management
	DGfK	4 ( <i>122</i> )		▪ Senior Management
	GeoMV	27 ( <i>46</i> )		▪ Senior Management
	BDVI	9 ( <i>1300</i> )		▪ Senior Management
Cartographic data	VKViD	25 ( <i>25</i> )		▪ Senior Management
Other			3	▪ Senior Management
<b>TOTAL</b>		220 ( <i>1,797</i> )	3	

Table 22: Overview of the PSI Re-user Web survey data for the geoinformation market.

### Summary

Although driven by necessity, the revised approach to obtaining data from the supply side helped fulfil the Project's primary objective and also brought with it two specific advantages.

Firstly, the time consumed in the Project having to explain the technicalities of PSI re-use as well as exclusive agreements was considerably reduced. Because of their position within their respective associations' most of the people contacted were already familiar with the ideas and issues surrounding PSI re-use. That being the case any statements they made on behalf of their association's members carried a relatively higher weight and hence evidential value. The possible exclusive agreements to have emerged from the Project suggest the assumption is correct.

Secondly, the supply side organisations are also representative of the larger community of which they are apart. The tables in this section give the number of contacts included but also (*in italics*) the possible number of contacts this group could represent. Thus it would not be unreasonable to state that if 332 organisations within the four information domains have had no experience with exclusive agreements than it is likely that their peers, in this case some 2,894 other yet similar organisations also have no knowledge of or experience with exclusive agreements as understood by Article 11 of the PSI Directive.

#### Public Sector Information (PSI):

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

## 2.7. Qualitative Results

### 2.7.1. Reception of and Reaction to the Survey

The reception and reaction to the survey was essentially the same for both the supply and demand side. Most of the survey recipients could not make sense of the questions that were being asked. Quite a few public sector bodies got back to the IPEAG 2010 Project Team and stated that the legislation did not apply to them. Others asked for a more in depth explanation, and this despite the comprehensive materials sent with the questionnaires and the background information made available through the GEOkomm website. On the re-user side there were promises to complete the questionnaires which despite reminders failed to materialise. It is suggested that such a reception and such responses are due in no small measure to the large scale lack of awareness surrounding PSI re-use in Germany as understood by the PSI Directive.

A consequence of the lack of awareness led to some confusion over the possibility of an exclusive agreement within the geoinformation community. The information given by a demand side respondent turned out to be a misunderstanding. Upon verification both PSI holder and PSI re-user stated unambiguously that their agreement did not constitute an exclusive agreement.

The example from the geoinformation community highlights the situation that while exclusive agreements are by their nature restrictive agreements, not all agreements involving restrictions are necessarily exclusive agreements. The constellation that is the subject of the IPEAG 2010 Project is quite specific and this example shows how easy it is to mix and confuse an intuitive understanding of exclusive agreements with the more specific constellation provided for by Article 11 of the PSI Directive.

Also worth mentioning is that the example arises from an area which while offering great potential, i.e. local authority suppliers of GIS data, equally shows where the greatest problems lie. The usage terms and conditions although clearly stated are nevertheless complicated and restrictive. Yet, the “General Terms and Conditions” (Allgemeine Geschäftsbedingungen - AGB) are at least there. On the basis that it is easier to adapt existing structures than create new ones from scratch the example – while not an example of an exclusive agreement – does suggest a form of action for the future, namely the installation of PSI re-use principles into current frameworks.

It is also important to emphasize that the IPEAG 2010 Project is only really qualified to talk about indications of possible exclusive agreements. This weaker form of conclusion is necessary as replying to the survey’s direct questions regarding exclusive agreements respondents often gave “not known” as an answer rather than a definitive “no” or even a “yes”. The “not known” type of answer was common amongst legal publishers who, as has been noted previously, struggle to regard themselves as re-users of legal information in the sense as understood by the PSI Directive. Nevertheless, the survey did reveal issues that although do not concern exclusive agreements *per se*, would certainly come under the chapter heading of Article 11 of the PSI Directive, namely non-discrimination and fair trading.

### 2.7.2. Quality Control and Corroboration of Evidence

In addition to the specific issues presented by the reception and reaction to the survey, the diverse and fragmented nature of the German public sector administration and business environment presented challenges to ensuring that the survey's result would be systematic and there by attain the necessary evidential value. This being the case it was important for the IPEAG 2010 Study to ensure the assessments were corroborated from additional sources. The corroboration involved a two fold action plan:

- Extensive literature and desk research
- Consultation with subject area experts

The extensive literature research involved scanning literature databases for references to possible exclusive agreements associated with the re-use of public sector information. For the legal aspects juris was the preferred source, otherwise GBI-GENIOS was the most comprehensive source as this information resource enabled a search across all the major German daily newspapers, regional newspapers and specialist journals. Other than references to juris GmbH and the Bundeanzeiger Verlag – both of whom are discussed in this report in detail – the literature and desk research yielded no new evidence for or against the existence of exclusive agreements as understood by Article 11 of the PSI Directive.

As mentioned in the previous section, the better inference is to look upon the outcome as a weaker form of conclusion as the lack of awareness of PSI re-use would imply that the subject has had little exposure in the mainstream press or specialist journals. A list of the legal resources consulted in the course of the IPEAG 2010 Project is nevertheless given in section 7. at the end of the Final Report.

### 3. DETAILED ANALYSIS OF SURVEY FINDINGS

#### 3.1. Overview

The IPEAG 2010 Project survey of PSI holders and PSI re-users yielded mixed results. The survey findings were corroborated with evidence and opinions from experts in their respective fields. Using the combined assessments the study has identified the following potential exclusive agreements impacting the PSI re-use market in Germany. These will be considered by sector:

- Legal information
- Business information
- Weather information

#### 3.2. Legal Information

##### 3.2.1. Description

The German company makrolog Content Management AG initiated litigation against the Federal Republic of Germany, represented by the Federal Office of Justice, in respect of legal information, that collected by official documentation centres, constitutes the legal material which makes up the Federal Law Database maintained in the form of the “gesetze-im-internet” portal by juris GmbH.

##### 3.2.2. Facts

###### The Parties

Based in Bonn the **Federal Office of Justice** (Bundesamt für Justiz – BfJ) is in its own words “the central service authority of the federal German judiciary”. A subordinate institution of the Federal Ministry of Justice (Bundesministerium der Justiz – BMJ) the Federal Office of Justice was established on 1 January 2007. The BfJ is a key institution in a series of initiatives that have involved the re-organisation of administrative structures as well as the re-distribution of responsibilities in specific areas of the justice system. These included international legal relations; the register system (the Federal Central Criminal Register and the Central Register of Companies and the Central Public Prosecution Register), as well as the tasks of the general administration of justice (judicial statistics, Judicial Payment Enforcement Agency).

The privately owned, Wiesbaden based company **makrolog Content Management AG** (MCM AG) specialises in all aspects concerning the management of content for use in print and electronic products. MCM AG is the parent company of Recht für Deutschland GmbH (RfD) which maintains and provides access to the biggest facsimile archive of official journals in Germany at both the Federal and Federal State level. The Recht für Deutschland database contains over 1.3 million documents and draws upon official information from official legal journals (Gesetzesblätter, Verordnungsblätter), administrative journals (Amtsblätter) and ministerial journals (Ministerialblätter).

###### Public Sector Information (PSI):

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

Now promoted as “Das Rechtsportal” or “The Legal Portal”, juris used to be marketed as the official German legal information system. Initially a research project under the Federal Ministry of Justice, the juris service was commercialised in 1985. In 2001 **juris GmbH** was partially privatised, 45.33% of the company going to Sdu nv in the Netherlands. The official status and authority of the legal information in juris is guaranteed by its supply from public sector bodies, most notably the document centres of the courts. In an arrangement concluded some years ago and referred to as the “Bundesvertrag”, juris GmbH receives information on an exclusive basis from the courts as well as from the Federal Ministries. In return for a fixed payment juris GmbH also made the juris service available to public authorities for no extra direct charge. In this way, juris GmbH, although a fully fledged commercial organisation has been providing access to legal information akin to that of a public service.

### **The Dispute**

On the 5<sup>th</sup> June 2007 makrolog Content Management AG (MCM AG) submitted a request under the German Information Re-use Law (IWG) to the Federal Justice Ministry (BMJ) requesting the specific compilation of legal information that, collected by official document centres, constitutes the Federal Law Database (Bundesrechtsdatenbank). In a reply dated 26<sup>th</sup> June 2007 the BMJ rejected the IWG request on the basis that the BMJ was not the competent authority. The BMJ subsequently referred the request to its subordinate institution the Federal Office of Justice (Bundesamt für Justiz – BfJ) which as from 1<sup>st</sup> January 2007 had assumed responsibility for the documentation of Federal law.

Replying to MCM AG’s letter of 5<sup>th</sup> June 2007 the Federal Office of Justice (BfJ), in a letter dated 23<sup>rd</sup> July 2007 rejected the IWG request requesting the legal information that, collected by official document centres, constitutes the Federal Law Database (Bundesrechtsdatenbank) giving the following reasons.

- Firstly, the IWG request failed to give precise details on the information being requested.
- Secondly, the transfer of legal information from the Federal Office of Justice (BfJ) to juris GmbH for the eventual production of the Federal Law Database - which populates the “gesetze-im-internet.de” portal and in doing so provides the public sector with a vital tool - does not constitute re-use of the information as understood by § 3 I 1 IWG.
- Thirdly, a contractual agreement between the Federal authorities and juris GmbH guarantees juris an exclusive right to be provided with legal information for the Federal Law Database by the official documentation centres. According to specific contractual terms in this agreement juris GmbH may enjoy this privilege for the duration of the contract.

MCM AG responded to the Federal Office of Justice (BfJ) in a letter dated 22<sup>nd</sup> August 2007 stating that the BfJ argumentation contained a contradiction. On the one hand the BfJ argued that

#### **Public Sector Information (PSI):**

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

the transfer of the legal information to juris GmbH did not constitute re-use yet, on the other hand state the the Bundesvertrag provides the information for re-use by juris.

In addition MCM AG maintains that in terms of verifiable market activity, juris GmbH's singular capacity to organise and exploit the information indicates intensive economic use that goes beyond the intended benefit to the public sector. MCM AG lists a number of examples of where juris GmbH derives economic benefit either from direct sales of the Federal Law Database or indirectly through its inclusion in other juris branded products and services.

MCM AG initiated litigation to pursue their original IWG request. The focus of the case has moved to a request to gain access to information regarding the accounting means with which juris prices its use of the Federal Law Database materials. The litigation was started in 2008 and at the time of writing is still pending.

### 3.2.3. Legal Analysis

The Bundesvertrag of 1991 and revised again in 2001 regulates the informational and economic relationship between the Federal government and juris GmbH. The German Information Re-use law (IWG) enacted in 2006 regulates the re-use of official information for purposes other than that for which it was collected in the first place. The legal interpretation of the Federal Office of Justice (BfJ) is that the transfer of the information from the official document centres to juris GmbH does not constitute information re-use. Further, the Federal Office of Justice (BfJ) argues that only an exclusive agreement can guarantee the integrity of the Federal Law Database and bases its argumentation on that used by the Federal government in its Explanatory Note to the German Information Re-use Law.<sup>43</sup>

### 3.2.4. IPEAG 2010 Project Assessment

Although Article 11 of Directive 2003/98/EC generally prohibits exclusive agreements it does not ban them completely. Where there is a public interest to warrant such an agreement, the Directive sets out specific conditions upon which such an agreement can be sustained. Namely, that full details regarding the agreement are published and that the arrangement be reviewed every three years.

Assessing the appropriateness of the above in the light of Article 11 of Directive 2003/98/EC it is the view of the IPEAG 2010 Project Team that

- there is a *de jura* and *de facto* exclusive agreement between the Federal Government and juris GmbH regarding the provision of legal information that, collected by official document centres, constitutes the Federal Law Database (Bundesrechtdatenbank). The Federal Office of Justice (BfJ) explicitly states that

---

<sup>43</sup> See BT-Drs 16/2453 on page 17 and the detailed discussion of this line of argumentation in the context of the Bundesanzeiger Verlag in section 4.3.2. below.

the agreement is exclusive. Similarly in additional litigation before the European Commission, the EU representative describes the arrangement as “exclusive”.

- The issue of whether the agreement between the Federal government and juris GmbH constitutes an exclusive agreement as understood by Article 11 of Directive 2003/98/EC is a further and contentious question. The Bund argues that the arrangement as provided for by the Bundesvertrag is not covered by the German Information Re-use Law (IWG) and therefore remains out of the scope of Directive 2003/98/EC. The BfJ argues for the agreement’s justification on the grounds of public interest but has not published details to support this view. This however, is logical if as previously stated the BfJ understands the provisions of Directive 2003/98/EC not to be applicable.
- MCM AG on the other hand has listed at least 5 scenarios in which economic benefit is derived by juris GmbH as a result of the arrangement it has with the Bund. Adding that juris’s role in the arrangement goes beyond that which is necessary to protect the integrity of the “gesetze-im-internet” portal.

**On the basis of this assessment the IPEAG 2010 Project Team takes the view that the arrangement between the German Federal government and juris GmbH warrants further clarification in order to determine conclusively that it is not an exclusive agreement as understood by Article 11 of Directive 2003/98/EC.**

This assessment would however also add that a more market-orientated remedy which would bring benefit to all stakeholders in this segment of the PSI re-use market will more likely require a policy change than specific amendments to the existing regulatory framework. In this case the model used by the Federal government with respect to involving commercial organisations in the performance of the public tasks required by the electronic Bundesanzeiger is of potential interest.

### 3.2.5. Contact Details of the Respective Parties

#### Makrolog Content Management AG

Makrolog Content Management AG

<b>Organisation:</b>	makrolog Content Management AG Registergericht: Amtsgericht Wiesbaden Registernummer: HRB 21424
<b>Contacts:</b>	<b>Board of Directors:</b> Andreas Herberger (Chairman)
<b>Communications:</b>	makrolog Content Management AG Patrickstrasse 43 65191 Wiesbaden Telefon: +49 (0)611 - 95 78 20, Telefax: +49 (0)611 - 95 78 228 Email: <a href="mailto:postmaster@makrolog.de">postmaster@makrolog.de</a> / URL: <a href="http://www.makrolog.de">http://www.makrolog.de</a>

#### The Federal Justice Office

Bundesamt für Justiz

<b>Organisation:</b>	Bundesamt für Justiz
<b>Contacts:</b>	Herr Gerhard Fieberg Präsident des Bundesamt für Justiz
<b>Communications:</b>	Bundesamt für Justiz Adenauerallee 99 - 103 53113 Bonn Deutschland Telefon: +49 (0)228 99 410 – 40 / Fax: +49 (0)228 99 410 - 5050 E-Mail: <a href="mailto:pressestelle@bfj.bund.de">pressestelle@bfj.bund.de</a> / URL: <a href="http://www.bundesamt.de">www.bundesamt.de</a>

#### juris GmbH

juris GmbH

<b>Organisation:</b>	juris GmbH Registergericht: Amtsgericht Saarbrücken Registernummer: HRB 8485
<b>Contacts:</b>	<b>Board of Directors:</b> Samuel van Oostrom, Johannes Weichert
<b>Communications:</b>	juris GmbH Gutenbergstraße 23 66117 Saarbrücken Tel.: +49 (0)681 5866-0 / Fax: +49 (0)681 5866-239 E-Mail: <a href="mailto:info@juris.de">info@juris.de</a> / URL: <a href="http://www.juris.de">www.juris.de</a>

#### Public Sector Information (PSI):

#### Identification of potential Exclusive Agreements – Germany

GEOkomm IPEAG 2010 – Final Report – Autumn 2010

### 3.3. Business Information

In the business information sector the attention of the IPEAG 2010 Project was drawn to a matter involving Creditreform, on the one hand and the official Resident Registration Offices on the other. Although first impressions suggested evidence of the existence of a possible exclusive agreement subsequent investigation and analysis revealed that this was not the case.

Nevertheless, as with the example from the geoinformation community (see section 2.7.1. above), the episode has been included in the Final Report as it further illustrates the continuing ambiguity and uncertainty in Germany surrounding PSI re-use. The episode also serves as a timely reminder that PSI re-use involves other regulatory frameworks and not just the PSI Directive along with the legislation implementing the Directive within EU Member States' legal systems.

#### 3.3.1. Description

Over a period spanning 2008 and 2009 the German organisation Creditreform e.V. was in contact with Federal State Ministries of the Interior to enquire why they, as commercial organisations, had been denied access to data from the official Resident Registration Offices (Einwohnermeldeämter). The data sought related to information from public sector information sources regarding details on people who had moved. Rights of access to this data are regulated by the Registration Framework Law (Melderechtsrahmengesetz MRRG) and the corresponding provisions of the Federal State Registration Laws.

#### 3.3.2. Facts

##### The Parties

Over 125 years old, **Creditreform e.V.** (Verband der Vereine Creditreform e.V.) is Germany's oldest and leading supplier of qualified business information. Its range of products and services are based around assessments of credit worthiness, the most important indicator of which is the credit rating (Bonitätsindex). Creditreform classifies its own products and services into three groups

- Business information/intelligence (Wirtschaftsinformationen)
- Claims Management/Debt Collection Services (Forderungsmanagement/Inkasso)
- Direct Marketing (Direktmarketing)

Creditreform is actually a registered association with over 130 affiliated associations all over Germany. Customers of Creditreform's products and services are *de facto* members of the regional Creditreform association. Centralised activities have been housed in Creditreform AG which is also the holding company for Creditreform's subsidiaries and for its affiliations in other countries. The core information asset from which the information in the company reports is compiled is Creditreform's database containing 3.6 million data-sets on businesses throughout Germany. The database is regularly updated and the data verified through contributions from Creditreform's 130 affiliated regional associations in Germany and their 125,000 members.

##### Public Sector Information (PSI):

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

Official information on residents in Germany is recorded and held by local i.e. municipal level **Resident Registration Offices** (Einwohnermeldeämter). There are 5,283 decentralised Resident Registration Offices in Germany. The Offices fall under the ultimate authority of the Federal State Ministries of Interior. The legal requirement for residents to register their domicile is governed by Federal legislation, the Registration Framework Law (Melderechtsrahmengesetz - MRRG) which in turn has been implemented at the Federal State level. Accordingly, the rights of access to the information held in the registers are regulated by the Registration Framework Law (Melderechtsrahmengesetz) and the corresponding provisions of the Federal State Registration Laws.

According to § 21 I MMRG and the corresponding provisions in the relevant legislation of the Federal States, registration offices may provide certain information, (i.e. first name and family name, academic title and address) on residents to either a person or non-public organisation. Nevertheless, access to such data does not constitute a basic right but is granted subject to the discretion of the registration authority who is required to give due weight and consideration to the privacy concerns of the person about whom the information is being sought. From a PSI re-use perspective known re-users of Resident Register information include credit rating agencies such as Creditreform, BÜRCEL and Schufa as well as location information services. Worth noting is also that since the Federalism Reform of 2006 the Bund is now competent for resident registration matters.

### **The Issues**

In its submission to the European Commission as part of the Public Consultation of the European Commission regarding the Review of the PSI Directive, Creditreform e.V. in a letter dated 15<sup>th</sup> September 2008, acting on behalf of its members drew the Commission's attention to the following problem the business information industry had been facing in Germany.

In the middle of 2008 Creditreform businesses were abruptly denied access to data from the Resident Registration Offices. The information in question concerned location details of people that had moved. This kind of data is commonly sought by lawyers and commercial organisations in order to perform debt collection services as well as carry out the official business of the courts. Creditreform acknowledged that the rights of access to the data held on the official registration registers are regulated by Federal and more particularly Federal State law. Creditreform e.V. accordingly contacted the Federal State Ministries of the Interior to enquire about the apparent change in policy.

#### **3.3.3. Situation Analysis**

Creditreform carries out tasks on behalf of its customers. One such task is the collection of debts. In order to enter into correspondence with debtors, to initiate legal proceedings or to enforce a judgement (ein Urteil vollstrecken) Creditreform as well as the other "Auskunftsdatei" based companies need to know the current valid address of the party involved. It is standard practice to apply for address details from the local, competent Resident Registration Offices.

#### **Public Sector Information (PSI):**

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

As a result of Creditreform's enquiries directed at the Ministries of the Interior at the Federal and Federal State levels a proposal was put collectively to the "Auskunftsdatei" based companies. The proposal was that they could all continue to receive the information, but would have to declare in writing (i.e. commit to a contractual obligation) that they would hold the data for no longer than 3 weeks and would not re-use it in any capacity – a clear restriction and an agreement with overtones of exclusivity.

This was problematic for the "Auskunftsdatei" based companies as they have a general and regular need for reliable address information. It is a given that correct data should flow automatically into their own databases and that in any case the companies took the view that such use and re-use is also permitted by legislation.

In the discussions that ensued it was noticeable that the Federal States differed in their understanding of the relevant legislation and subsequently in the exercise of their discretionary powers. Some Federal States tended more towards limiting access to the data they held than others. Here Schleswig-Holstein was the most restrictive, Baden-Wurttemberg the least. To the external observer there seemed to be no clear consensus amongst Resident Registration Offices and the Interior Ministries gave no indication of their position on the matter.

One opinion expressed to the IPEAG 2010 Project Team was that the Resident Registration Offices wanted to prevent address data from being procured on a massive scale. Their anxiety being that a new data pool would be created and that such data pools would detract from the public task accorded the Resident Registration Offices. The "Auskunftsdatei" based companies were not sympathetic to this view pointing out that they already maintain databases consisting of millions of datasets and that such massive pools of information have existed already for a long time.

At the time of writing the problem as conveyed to the European Commission by Creditreform in the latter's letter of 15<sup>th</sup> September 2008 appears to have resolved itself. Other players from the branch lobbied the responsible official bodies. The "Auskunftsdatei" based companies in turn were able to give assurances regarding their re-use of the data thereby diffusing the concerns of the registration authorities in respect of their duty to give due weight and consideration to the privacy of the person about whom the information is being sought.

### 3.3.4. IPEAG 2010 Project Assessment

As the case involving Creditreform and the availability of data from the official Resident Registration Offices (Einwohnermeldeämter) was originally flagged as a possible instance of an exclusive agreement it is only fitting that this section concludes by assessing the appropriateness of the above in the light of Article 11 of Directive 2003/98/EC.

On a fuller consideration of the known facts it is the view of the IPEAG 2010 Project Team that

- the letter from Creditreform to the European Commission dated 15<sup>th</sup> September 2008 described a *de facto* exclusive agreement in the sense that it was selective and discriminated against commercial re-users in the business community.

#### Public Sector Information (PSI):

Identification of potential Exclusive Agreements – Germany  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

- However, from the facts that are known it is difficult to discern an organised systematic set of agreements that would conform to an understanding of exclusive agreements as understood by Article 11 of Directive 2003/98/EC.
- The Federal States clearly differ in their interpretation of the relevant legislation and in the manner and extent to which they exercise their mandatory discretion. This in turn is bound to lead to ambiguity and variance in the way the official registration authorities deal with requests for information.
- The situation as described by Creditreform in its original letter to the European Commission dated 15<sup>th</sup> September 2008 seems to have resolved itself at the time of writing and therefore warrants no further action on behalf of the European Commission.

Although portrayed in this part of the Final Report as a problem the apparent ambiguity and uncertainty as regards the use and re-use of official data from the Resident Registration Offices could equally be turned into an opportunity in terms of developing a PSI re-use strategy for Germany. Given the Federal government's intention to revise the current system of national registration registers, one way of reducing ambiguity and uncertainty with respect to the use and re-use of this type of PSI would be to incorporate the principle of **"PSI Re-use by Design"** into the planning and development stages of any new developments concerning a revised system of registration registers.

### 3.4. Weather Information

#### 3.4.1. Description

The German Association of Weather Services Providers (VDW) has called upon the German Foundation for Pollen Information Services (PID) to provide information on pollen emission levels to the members of the Association and not only - that is exclusively - to the German Weather Service (DWD).

#### 3.4.2. Facts

##### The Parties

The official source of weather information in Germany is the **German Weather Service** (Deutscher Wetterdienst – DWD). Set up in 1952 the DWD is the National Meteorological Service of the Federal Republic of Germany “responsible for providing services for the protection of life and property in the form of weather and climate information.” Maintaining a network of 182 main meteorological watch offices and weather stations, the DWD records a range of meteorological information. The data is collected and transposed into weather forecasts, warnings and reports which are issued free of charge but also form the basis of DWD fee-based services.

The **German Association of Weather Services Providers** (Verband Deutscher Wetterdienstleister – VDW) is composed of private organisations who offer weather information services to third parties, such as media organisations, insurance companies as well as private individuals. The VDW currently has 17 members who represent 90% of this specialist market segment, employing over 200 people and generating annual revenues of approximately € 30 million.

The **German Foundation for Pollen Information Services** (Stiftung Deutscher Polleninformationsdienst – PID) was set up in 1983 following an initiative driven by the German Association of Allergy Doctors (Ärzteverband Deutscher Allergologen), The German Weather Service and the pharmaceutical company Fisons Arzneimittel GmbH. The Foundation’s endowment is currently provided by RPR Fisons Arzneimittel GmbH who also Chair the Foundation’s Advisory Council (Beirat). The Foundation specialises in collecting data on pollen emissions from 55 locations throughout Germany during the pollen season and from 15 stations all year round.

##### The Dispute

According to the VDW, the Association, acting on behalf of its members, has requested the supply of data concerning pollen levels from the German Foundation for Pollen Information Services. The VDW’s repeated requests have met with no success although the data is exclusively supplied to the DWD, an organisation which the Association asserts competes with its members in the market for the provision of weather information services. In a letter dated 8<sup>th</sup>

#### Public Sector Information (PSI):

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

March 2010 the VDW has requested that its members be supplied pollen emissions data under § 3 I IWG.

### 3.4.3. Legal Analysis

The German Weather Service (DWD) is a public body as understood by § 2 Nr. 1 b IWG and carries out its mandated activities as determined by the German Weather Services Law (DWD-Gesetz) of 10<sup>th</sup> September 1998. The VDW is a registered association with the local court in Charlottenburg in Berlin. The VDW acting on the presumption that the German Foundation for Pollen Information Services - PID is a public body as understood by § 2 Nr. 1 b IWG, this being indicated by the fact that the DWD is on the Board of Directors, submitted a formal request to procure the pollen emissions data from PID under § 3 I IWG.

### 3.4.4. IPEAG 2010 Project Assessment

Although Article 11 of Directive 2003/98/EC generally prohibits exclusive agreements it does not ban them completely. Where there is a public interest to warrant such an agreement, the Directive sets out specific conditions upon which such an agreement can be sustained. Namely, that full details regarding the agreement are published and that the arrangement be reviewed every three years.

It is the assessment of the IPEAG 2010 Project Team that

- there is a *prima facie* case indicating the existence of a possible exclusive agreement governing the supply of pollen emissions data from German Foundation for Pollen Information Services (Stiftung Deutscher Polleninformationsdienst (PID) to the German Weather Service (DWD),<sup>44</sup>
- there is neither an indication on the Website of the PID nor from any communication from the Foundation's management that a restriction on the supply of the pollen emission information to a single organisation is warranted on the basis of public interest as understood by § 2 Nr. 1 b IWG.

However, in this particular case the IPEAG 2010 Project Team also highlights the need to clarify to what extent the German Foundation for Pollen Information Services (PID) is indeed a public body as understood by § 2 Nr. 1 b IWG as assumed by the VDW in its letter to PID dated 8<sup>th</sup> March 2010. The Foundation is after all financed primarily by a commercial organisation, RPR Fisons Arzneimittel GmbH Pfizer and provides a service determined by the Foundation's originators.

---

<sup>44</sup> The PID in fact explicitly states the exclusive arrangement "Die Stiftung Deutscher Polleninformationsdienst (PID) arbeitet exklusiv mit ihrem Partner, dem Deutschen Wetterdienst, zusammen." See the heading "Pollenvorhersage" at the PID website on <http://www.pollenstiftung.de/pollen>.

### 3.4.5. Contact Details of the Respective Parties:

#### The German Association of Weather Services Providers

Verband Deutscher Wetterdienstleister – VDW

<b>Organisation:</b>	Verband Deutscher Wetterdienstleister e.V. Registergericht: Amtsgericht Charlottenburg Registernummer: VR 23546 Nz
<b>Contacts:</b>	<b>Board of Directors:</b> Dennis Schulze (Chairman) Dr. Joachim Klassen Norman Gabler
<b>Communications:</b>	Verband Deutscher Wetterdienstleister e.V. Gradestraße 50 12347 Berlin  Telefon: (030) 600 98 – 200, Telefax: (030) 600 98 – 288  Email: <a href="mailto:vorstand@wetterverband.de">vorstand@wetterverband.de</a> / URL: <a href="http://www.wetterverband.de">http://www.wetterverband.de</a>

#### The German Foundation for Pollen Information Services

Stiftung Deutscher Polleninformationsdienst – PID

<b>Organisation:</b>	Stiftung Deutscher Polleninformationsdienst
<b>Contacts:</b>	<b>Board of Directors:</b> Prof. Dr. med. Karl-Christian Bergmann (Chairman) Frau Prof. Dr. med. Heidrun Behrendt Dipl.-Met. Uwe Kaminski
<b>Communications:</b>	Geschäftsstelle Charitéplatz 1 10117 Berlin  Telefon: +49 30 450 518006 / Telefax: +49 30 450 518988  E-Mail: <a href="mailto:pollenstiftung@t-online.de">pollenstiftung@t-online.de</a> / URL: <a href="http://www.pollenstiftung.de/">http://www.pollenstiftung.de/</a>

## 4. MARKET-BASED ANALYSIS OF SURVEY FINDINGS

### 4.1. Background and Context

To better understand the significance of the survey results it is important to consider them in the context of their respective information markets. To this end the following section describes the information domains in more detail focussing of two aspects; market description and known legal issues relating to the re-use of public sector information.

### 4.2. Legal Information Market

#### 4.2.1. Market Description and Characteristics

Given that Germany comprises 17 separate legislatures, and that regional institutional autonomy is entrenched it is understandable that the German legal information market should be diverse, fragmented and complex.

Providers of legal information in terms of legislation and regulations are the Federal and Federal legislatures as well as their subordinate institutions such as Ministries and appointed Offices. The Federal and Federal State courts and numerous tribunals produce legal information in the form of judicial decisions. Direct re-users of legal and administrative information in the sense as understood and fostered by the PSI Directive are various and include lawyers, legal publishers and legal information providers. The latter are later entrants into the market being primarily electronic information providers. However, in recent years the distinction between legal publisher and legal information provider has become increasingly blurred. Whereas traditional legal publishers have developed their electronic product offerings for instance **beck-online** from Verlag C.H. Verlag, legal information providers such as LexisNexis have acquired print portfolios.

The legal publishers are however, by far the largest group of legal information users. There are over 50 legal publishers in Germany, of whom 30 are members of the trade association ARSV. Four main categories that comprise the legal information market are discernable, namely commentaries handbooks and journals; legislation; case law and regulatory information. The Verlag C.H. Beck is the only true generalist that has a leading in all the market segments. The size of the legal information market in 2008 is estimated at approximately € 450 million where, perhaps surprisingly the proportion attributable to online services lies between 10% to 15%. Estimates of market volume must also note the contribution of the three major players in the legal book market, namely the Schweitzer Fachinformationen, Sack Mediengruppe and Lehmanns Buchhandlung who together generate revenues in the region of € 250 million.

The essential point for the current assessment is that despite the large size of the legal information market in Germany and the fact of its high dependency on public sector information the overwhelming majority of legal publishers do not regard themselves as PSI re-users. It is significant that the legal issues contested mostly with juris GmbH have been carried out by companies that belong to the category of legal information provider.

#### **Public Sector Information (PSI):**

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

#### 4.2.2. Legal Issues Related to PSI Re-use

What is now juris GmbH started life as a government sponsored research project in the 1970s. In 1985 the project was put on a commercial footing with the founding of juris GmbH where with its stake of 95% the German government remained the majority shareholder. juris's mandate at the time was to be the legal information system for the German Federal Republic. In 2000 juris GmbH declared its intention to expand upon this mandate and began positioning itself in the market as a print-online publisher. The practical outcome of this revised strategy ("the second vision") was the production of commentaries and high-quality practice reports and newsletters in both print and electronic formats. In 2001 juris GmbH was privatised, a 45.33% share going to the Dutch publishing group Sdu. The German Federal State still maintains a majority shareholding of 50.1%. juris GmbH has reported company sales of €30.6 million in 2008 an increase of 8.6% on the previous year.

As mentioned previously, in the course of the MICUS 2008 study two examples of exclusive arrangements that involved juris GmbH were encountered. juris GmbH's legal obligation to end such exclusive arrangements by the 31<sup>st</sup> December 2008 was recorded in the Director's Statement to the Annual Accounts for 2008. It is now possible to directly procure the desired PSI from the two public sector bodies and not be referred to juris GmbH as the sole supplier.

Nevertheless, PSI re-use related litigation still dogs the company. The two major areas concern i). the legality of the privatisation process in the period 2000 to 2001 together with the tender procedure involved in the awarding of contracts to provide legal information provision services of the Federal States and ii). the exclusive arrangements surrounding the construction on the Federal Law Database (Bundesrechtdatenbank). While the latter is not an infringement in the sense of § 3 IWG and hence Article 11 of Directive 2003/98/EC it is argued that it constitutes an exclusive arrangement by other indirect means.

#### **Federal Law Database**

This has been discussed in detail in section 3.2. above.

#### **Public Contracts for Official Legal Database Services**

The European Commission has sent a formal request to Germany concerning the conclusion of public contracts for legal database services by the Federal Government and a number of German States.<sup>45</sup> This formal request takes the form of a "reasoned opinion", the second stage of the infringement procedure laid down in Article 226 of the EC Treaty. If there is no satisfactory reply within two months, the Commission may refer the matter to the European Court of Justice.

After a partial privatisation in 2001, the Federal Republic of Germany owns currently just over 50% of juris GmbH. In the course of that privatisation, the "Bundesvertrag" i.e. the cooperation agreement with the Federal Government, had been thoroughly revised and amended, in particular

---

<sup>45</sup> EU Press Release IP / 09/580 from 14<sup>th</sup> April 2009.

regarding its provisions on remuneration. The Commission held the view that this amendment modified the essential terms of the cooperation agreement. Therefore, it has to be considered as a new contract which should have been awarded by contract award procedure complying with Directive 92/50/EEC on the award of public service contracts. Such a procedure could have been combined with the selection of the private partner for the Public-Private Partnership to be established through the partial privatisation of juris GmbH. This would have ensured that the selection of the private partner and the award of the new cooperation agreement to the jointly owned company are done in a transparent and competitive manner, complying with the Internal Market rules on the award of public contracts.

In 2006, judicial authorities of the States Baden-Württemberg, Brandenburg, Hamburg, Hesse, Mecklenburg-Vorpommern, Lower Saxony, North Rhine-Westphalia, Rheinland-Pfalz, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein und Thüringen awarded contracts for legal database services to juris GmbH, providing database access for their courts and judicial authorities. This award was made by a negotiated procedure without prior publication of a call for tenders.

The German government claimed that, on the basis of a “competitive market enquiry”, the services of juris GmbH turned out to be ideally suited for the needs of the judicial authorities. In the view of the German government, it was therefore justified to award the contract by a procedure without publication of a call for tenders on the ground that juris GmbH was the only conceivable service provider.

The Commission did not follow this line. It took the view that the award procedures conducted by the judicial authorities were biased in favour of juris GmbH and that the authorities would have been obliged to award the contracts by open or restricted procedures with publication of a European-wide call for tenders. According to the European Commissions a decision is expected in the middle of 2010.

### 4.3. Business Information Market

#### 4.3.1. Market Description and Characteristics

In Germany the business information market is large, multi-faceted and depends on information from the public sector to differing degrees. Like the legal information markets many well-known brands have a long history. For instance Creditreform and Bürgel specialists in the provision of credit risk information are both over 120 years old. Schlütersche Verlagsgesellschaft mbH & Co. KG and G. Braun Telefonbuchverlage GmbH & Co. KG prominent names in the directories business were founded in 1747 and 1813 respectively.

Also echoing parallels with the legal information market there are in the business market the prominent presence of former state owned institutions who play a key role in the supply of public sector information (company registration information) as well as information that used to be regarded as public sector information (telephone contact information). It is along these two divisions that the following analysis of the business information market will be covered.

#### Company Information

In Germany companies are required to register with the local court (Amtsgericht) competent for the area in which the company has its main office. Legislation proscribes what information has to be submitted to the local court on a regular or ad hoc basis. Following legislation of 2007 (see section 4.3.2. below) annual financial statements have now to be sent to the electronic Bundesanzeiger. The electronic Bundesanzeiger is maintained by the Bundesanzeiger Verlag who although a 100% privately owned organisation carries out its task as an “administrative helper”. The Bundesanzeiger is also the organisation that implemented and maintain the Central Company Register (Unternehmensregister).

The 2007 legislation had a major impact on the availability of company information as a type of public sector information. It provided not only for a federal authority to monitor and act on the repeated non-compliance of company filing requirements but also for a system of fines with which compliance can be enforced. Whereas in 2002 only 5% of companies in Germany were meeting their formal publication duties the figure today is 94%.

Company information sources as opposed to directories and databases *per se* are a clearly definable market segment of the overall B2B information market. Here firms like the Bundesanzeiger Verlag, Creditreform, Hoppenstedt, D&B Deutschland and Bureau van Dijk produce fee-based information products and services that give detailed information on companies and in particular on their financial status. Generally speaking, the products and services of the providers referred to above are targeted at information specialists and differ from one another in their scope and functionality. For example, whereas mostly but not exclusively, Hoppenstedt, D&B Deutschland and Bureau van Dijk concentrate on publicly quoted companies and large corporations, the Bundesanzeiger Verlag and Creditreform also cover middle-sized companies and small and medium enterprises (SMEs).

#### Public Sector Information (PSI):

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

In the light of the potential exclusive agreement for the business information sector discussed earlier is the observation that Creditreform and Bürgel are traditional suppliers of what in Germany is referred to as “Auskünftsdateien” These are essentially credit rating assessments which over the years have developed into risk management portfolios as well as marketing products and services. Although highly dependent on PSI from the official registers the two organisations also acquire data directly from companies or from local authorities.

With this local presence in mind it is important to highlight the legal structure of these two players. Creditreform is actually an Association of 130 locally focussed Creditreform franchised companies. Certain services are provided to the group by a centrally operating organisation. Bürgel at 61 is similarly structured. Creditreform reported turnover for 2009 as € 481 an increase of 8% on the previous year. Both are members of FEBIS the European Association for Business Information Services.

### **Directory Information**

In German the term “Verzeichnisse” is used to refer to directories. Common too is the term “Branchenauskunft” which refers to information about a particular industry or trade. Although such information resources are commonly associated with telephone information sources and telecommunications in general, the German market for directory information predates the invention of the telephone by more than 100 years. Some of the currently active players in the market were founded as far back as 1747, 1813 and 1827.

In Germany the directories and databases business forms a definable and verifiable segment of the overall B2B information market. The directories and databases market segment is made up of companies whose products and services are based upon the publication of contact addresses and firm profiles or similar structured information. The information is obtained from a mixture of sources. Some sources may be indirect, i.e. the contact information is derived from organisations with whom the target firm or individual has had to register. Examples of such sources are official Registers like the recently created Central Company Register (Unternehmensregister) as well as telephone companies. Alternatively, some sources of contact information may be regarded as direct, that is the information comes from the target firms, organisations, individuals as well as local authorities.

The directory information services market comprises some 200 companies who produce more than 2,000 different products which take the form of printed directories, CD-ROMs, online databases and also voice-based information products (i.e. automated telephone delivery). These products and services are for the most part financed through advertising. Of the approximately 200 companies that make up the market, 160 of them are members of the Trade Association for Information and Directory Media (Verband Deutscher Auskunfts- und Verzeichnismedien (VDAV)), the trade association that monitors the market for its members. The market size for the directories and databases segment is estimated in terms of turnover which according to the VDAV amounted to € 1.18 billion in 2009.

The overall directories information market and hence the business to business directories market in Germany is dominated by three products: Das Telefonbuch (The Telephone Directory),

### **Public Sector Information (PSI):**

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

GelbeSeiten® (Yellow Pages) and DasÖrtliche (The Local Directory). Although all three brands have already established themselves as online services, the core product in each case continues to be a printed publication. Essentially, these publications are based on and built around telephone contact details and are then adapted and fine-tuned for local and regional needs. This explains why the organisational infrastructure based on a regional and local networks behind each of the three brands is so similar.

### **News and Specialist Publishing**

News and specialist publishing is also a verifiable market segment that comprises the German B2B market. Although in comparison to the market segments mentioned above the news and specialist publishing draws to a lesser extent upon PSI. However, this is likely to change as on the one hand, the barriers between the markets and their actors blurs and on the other the collective understanding of what constitutes PSI (e.g. cultural and educational information) expands.

The definition of specialist publishing used by the used by two of the key trade associations within the market namely the German Trade Association of Journal Publishers (Verband Deutscher Zeitschriftenverleger (VDZ)) and The German Business-to-Business Publishers Association (Deutsche Fachpresse) embraces some 3,700 professional journals in Germany. Of these about 1,500 titles are scientific professional journals and other titles with a very low circulation which mostly does not take advertising.

The criteria for estimating the market size of the German B2B press market is based on turnover which itself is based on advertising revenues and sales due, mostly but not exclusively, to publication subscriptions. Based on information from the Annual Survey of the 480 publishers affiliated to the German Business-to-Business Publishers Association (Deutsche Fachpresse) the turnover of B2B press market segment in Germany in 20096 was € 3 billion, a slight decrease of 4.2% on the previous year.

### 4.3.2. Legal Issues Related to PSI Re-use

Although the possible exclusive agreement to emerge from the business information market comes from another quarter, a detailed discussion of exclusive arrangements surrounding company information and the Bundesanzeiger Verlag is warranted. This is because the status of the Bundesanzeiger vis-à-vis exclusive agreements is specifically referred to in the Explanatory Notes to the German Information Re-use Law (IWG). Also an appreciation of the Federal government's position with respect to the Bundesanzeiger Verlag and company information as a type of PSI will perhaps aid an understanding of the situation regarding juris GmbH and legal information.

#### Company Information

##### *Central Company Register*

Companies in Germany regardless of size and legal form are still required to register in the local Commercial Register (Handelsregister) which is held and maintained by the local court (Amtsgericht) competent for the area in which the company has its main office.

On the 1st January 2007 the Law on Electronic Trade Registers and Cooperatives Registers as well as Company Registers (Gesetz über elektronische Handelsregister und Genossenschaftsregister sowie das Unternehmensregister - EHUG) entered into force.

Following the changes brought about by the EHUG legislation, company registrations and filings submitted to the Commercial Register continue to be the overall responsibility of the local district courts. The courts however, are obliged to send their data to the Bundesanzeiger Verlag which acts in an official capacity as the appointed operator of the Central Company Register. In this way, the data collected locally by the courts may be accessed centrally through the newly created Central Company Register (Unternehmensregister) which is now universally accessible via <http://www.unternehmensregister.de>.

The other fundamental change brought about by the EHUG is that the yearly financial statements (Jahresabschlussberichte) are now collected, stored and published by the electronic Federal Gazette (elektronische Bundesanzeiger) and no longer by the local courts as was previously the case.

The electronic Federal Gazette is, as its name implies, the electronic i.e. digital version of the official, print based Federal Gazette which published by the Bundesministerium der Justiz (Federal Ministry of Justice) is produced and distributed by the Bundesanzeiger Verlag.

The EHUG did not increase the scope or extent of the publication duties placed upon firms. Rather it regulated the local and central competences of those organs and institutions (i.e. the local courts and the Federal Gazette) responsible for the publication of company information that is required by law.

#### **Public Sector Information (PSI):**

**Identification of potential Exclusive Agreements – Germany**  
GEOkomm IPEAG 2010 – Final Report – Autumn 2010

One of the consequences of the EHUG was also to put on an official basis the procedures with which a fine is issued in response to an infringement of the legal duty upon companies to disclose and publish information. In such cases, the Federal Justice Office (Bundesamt für Justiz) is now the responsible public authority and is empowered to impose fines from 2,500 up to 25,000 Euros. The fine can be imposed upon not just the company itself but also the company's legal representatives. In cases of non-compliance with the legal duty to disclose and publish information a prior warning has to be issued first. Fines can also be increased proportionally in cases of repeated non-compliance.

### *Exclusive Agreements*

In the Explanatory Notes to the German Information Re-use Law (IWG) the legislator and by implication the Federal government set out its understanding of § 3 IV IWG which transposes Article 11 of Directive 2003/98/EC into German law. Specifically, § 3 IV 1 IWG transposes Article 11 I of Directive 2003/98/EC into German law namely that contract or other arrangements between public bodies and third parties may not as a rule involve exclusive restrictions on the re-use of PSI. That information from the public sector for re-use should be made available to all market participants free of discriminating conditions. However, it is first necessary to determine whether the agreement concerns information re-use. Agreements whose sole purpose is the fulfilment of a public task are not subject to his rule as in such cases re-use is not in evidence.

To illustrate this view of the legislation the Explanatory Notes go on to discuss the arrangement between the Federal government and the Bundesanzeiger Verlag to publish legislative texts and texts of regulations. The duty to publicise the text of legislation is a constitutional duty enshrined in the Basic Law. According to Article 82 1 of the Basic Law the announcement of the law in the Federal Law Gazette formerly concludes the legislative process. Third parties such as the Bundesanzeiger Verlag can where they are mandated by the State assist the State in carrying out this public task.

The Explanatory Notes then go on to explain how exclusive agreements can be invoked. For example in a situation where a commercial publisher would not do so unless there is an exclusive agreement. To support this interpretation the Explanatory Notes refer to preamble note 20 of Directive 2003/98/EC pointing out that there is not a restriction that the third party should not carry out commercial activities in this respect.

### **Directory Information**

One of the increasingly attractive sources of PSI for this market segment is local data on people and things held in local registers. Protection of personal data plays a big role here and in this respect the directory information market segment has interests in parallel with the geoinformation community.

## News and Specialist Publishing

Significantly, the German public broadcasting stations ARD and ZDF were contributors to the European Commission's PSI Directive evaluation process in 2008.<sup>46</sup> At the time they argued strongly against the expansion of the scope of the Directive into the cultural and educational area. Recently, however by way of contrast the German Association of Magazine Publishers (Verband Deutscher Zeitschriftenverleger) has criticised the expansion of these broadcasting stations into the internet based on public funding.<sup>47</sup> As with company and directory information discussed above the issues revolve around the concern the commercial organisations have competing in markets with public sector bodies financed by the public purse.

## Additional Comments

Although there appears to be little evidence in these market segments of exclusive agreements as understood by Article 11 of Directive 2003/98/EC the points raised are important to the overall aims of the IPEAG 2010 Project for a variety of reasons.

- Firstly, the markets briefly described above show how the German business community adapts to and exploits the factual consequences of regionalism and local autonomy. The markets for company information and directory information are over € 2 billion and are large because they react to Germany's federalist structure.
- Secondly, the company information sector has undergone major restructuring underpinned by legal change since the PSI Directive came into force in 2003. The model used to empower the electronic Bundesanzeiger and increase company publication compliance from 5% in 2002 to 94% in 2010 has won the approval and support of other commercial players in the market. Creditreform, for example have recently launched a new set of company reports largely based on this new pool of company PSI.<sup>48</sup>
- Thirdly, the three market segments are highly competitive and have high information needs, not least of which are from local authorities. Following the lead from the geoinformation market, a constructive investment would be to begin sensitising the local authorities to licensing and usage conditions that are PSI friendly and remind the PSI suppliers not to enter into the kind of agreements which constitute exclusive agreements as understood by the Directive, i.e. to be proactive in terms of PSI re-use by design.

---

<sup>46</sup> See footnote 29 above.

<sup>47</sup> See „ARD und ZDF überfordert die Politiker“ by VDZ Managing Director Wolfgang Fürstner in Die Welt, 2nd August 2010, at [http://www.vdz.de/startseite\\_nachricht.html?&tx\\_ttnews\[tt\\_news\]=59000&tx\\_ttnews\[backPid\]=4&cHash=c6cf814163](http://www.vdz.de/startseite_nachricht.html?&tx_ttnews[tt_news]=59000&tx_ttnews[backPid]=4&cHash=c6cf814163)

<sup>48</sup> See Creditreform Annual Report 2009.

## 4.4. Weather Information Market

### 4.4.1. Market Description and Characteristics

The Association of Private Meteorological Services (PRIMET), the professional association of private weather information providers in Europe has 36 members of which 12, i.e. 33% come from Germany.<sup>49</sup> This statistic highlights the importance of the commercial weather information market in Germany.

On the public sector supply side the sole provider of official weather information is the **German Weather Service** (Deutscher Wetterdienst – DWD) which is based in Offenbach near Frankfurt am Main. Set up in 1952 the DWD is the National Meteorological Service of the Federal Republic of Germany “responsible for providing services for the protection of life and property in the form of weather and climate information.”

Maintaining a network of 182 main meteorological watch offices and weather stations, the DWD records a range of meteorological information. Also part of the greater network are some 1,850 secondary weather and precipitation stations, of which around 830 submit their reports online. The data is collected and transposed into weather forecasts, warnings and reports which are issued free of charge but also form the basis of DWD fee-based services. The DWD produces a whole spectrum of weather information ranging from synoptic observations and weather forecasts to radar images and satellite data. Direct re-users of weather information are foremost the commercial weather information providers.

Commercial weather information providers are various ranging from companies such as Meteomedia GmbH, MeteoGroup, wetteronline.de and Q.met GmbH that supply weather information services to media organisations, to specialist firms who produce meteorological reports for insurance companies. The national professional association of commercial weather information providers is the **German Association of Weather Services Providers** (Verband Deutscher Wetterdienstleister – VDW). Composed of private organisations who offer weather information services to third parties, the VDW currently has 17 members who represent 90% of this specialist market segment, employing over 200 people and generating annual revenues of approximately € 30 million.

### 4.4.2. Legal Issues Related to PSI Re-use

The German Weather Service (DWD) has a mandate to provide basic information services concerning the weather. Such services include weather predictions, reports and analyses. The DWD is a sub-division of the Federal Ministry of Transport, Building and Urban Development (Bundesministerium für Verkehr, Bau und Stadtentwicklung - BMBS) and is regulated by the provisions of the German Weather Service Law (DWD-Gesetz) enacted in 1998.<sup>50</sup>

---

<sup>49</sup> See [http://www.primet.org/index.php?option=com\\_content&view=article&id=12&Itemid=26](http://www.primet.org/index.php?option=com_content&view=article&id=12&Itemid=26)

<sup>50</sup> Gesetz über den Deutschen Wetterdienst (DWD-Gesetz) vom 10. September 1998 (BGBl. I S. 2871).

With a budget of € 224 million in 2009 the DWD employs just under 2,500 people. Many of those who work for the DWD do so in a scientific and technical capacity that also involves a significant amount of shift work which in turn contributes to the personal costs. A proportion of the DWD's budget is indirectly covered by revenues. According to the German Weather Service's 2009 Annual Report,

*“The DWD's revenues from the sale of products and services decreased in 2009 as compared with the previous year, by close to 18 million euros to a total of 50.5 million euros. The DWD, however, has no authority to dispose of the proceeds from its sales. They go directly into the Federal Budget and thus indirectly reduce the public funds which the DWD as Germany's National Meteorological Service needs for the fulfilment of its tasks, for example in the field of disaster control.”<sup>51</sup>*

In this regard the DWD in its financial operations is similar to the Trading Funds model as understood in the United Kingdom.

The German Association of Weather Services Providers (VDW) has been very vocal and active on behalf of its members with respect to the DWD and the way in which the DWD carries out certain aspects of its public task. The VDW's main contention is that the DWD are exceeding their public mandate and producing products and services which being made available at no charge are negatively impacting the efforts of commercial providers. The VDW has lobbied both the DWD and its responsible Federal Ministry on several occasions but with limited success. The result of which was that the VDW embarked upon litigation in April 2009, serving an injunction upon the DWD to prevent the DWD's production of selected services offered to end-users at no charge. The Administrative Court in Hamburg decided on behalf of the DWD arguing that this was within the DWD's mandate.

Also worth noting here is a case discussed by the **Federal Commissioner for Data Protection and Freedom of Information** in his Annual Report of Activities for 2006 and 2007. In the case the Commissioner was asked to review a request submitted to the German Weather Service (DWD) under the Federal Freedom of Information Law (IFG) and that had then been rejected by the DWD. The petitioner wanted to obtain information on an independent auditor's report that would have shed light on the methods of costing used by the DWD to price its products and services. The DWD rejected the request for information arguing that amongst other things, disclosing the information would negatively impact the fiscal interests of the Federal government. The Commissioner agreed with this line of argumentation and upheld the DWD's decision.<sup>52</sup>

Akin to the issues surrounding the possible exclusive agreement described for the legal information market in section 3.2 above, this is another example of where PSI re-users are being denied access to official information that would help them better assess PSI reuse by PSI holders.

---

<sup>51</sup> Deutscher Wetterdienst, Annual Report 2009, page 66.

<sup>52</sup> See 1. Tätigkeitsbereich zur Informationsfreiheit für die Jahre 2006 und 2007 des Bundesbeauftragtes für den Datenschutz und die Informationsfreiheit, Seite 64, „4.12.10 Wie viel kostet der Wetterbericht?“

## 4.5. Geoinformation Market

### 4.5.1. Market Description and Characteristics

The Inception Report already noted the sheer size and diversity of the geoinformation market in Germany where it was reported that the **Unternehmensspiegel 2010** published by **Business Geomatics**, lists 59 sub-domains that constitute the entire spatial information market.<sup>53</sup> The sub-domains vary from construction and planning to traffic management to the environment, software use and development! Yet, of the 75 companies listed in the Unternehmensspiegel 2010 only two companies gave a single category as the area of geoinformation that they were involved in. This single but representative example highlights the lack of simple, linear relationships between PSBs and re-users of PSI.

Nevertheless, within the geoinformmarket's diversity three distinct areas are discernable, namely,

- **Navigation and mobile services:** This market sub-segment includes portable as well as on-board satellite navigation systems, navigation systems available through mobile devices such as smart phones as well as other location based services.
- **Planning and documentation systems:** Included in this sub-segment are Geo-Information Systems (GIS) used in business and public sector planning processes as well as visualisation tools for 3D modelling of landscapes and towns.
- **Geomarketing:** This market sub-segment embraces primarily geo-referenced data for inclusion in products and services aimed at direct and targeted marketing.

Seen in these three categories it has been estimated that, in Germany, the market based on the re-use of geoinformation was in the region of € 1.51 billion in 2007.<sup>54</sup> Since 2000 the geoinformation market in Germany has grown considerably. The navigation sub-segment in particular has more than doubled from an estimated € 350 million in 2000 to € 728 million in 2007. Yet, most of this rapid growth has occurred without the participation of the public sector burdened as it is with legal uncertainty and ambiguous policies on information re-use which in turn tend to spawn unnecessarily complex usage terms and conditions for potential end users.

### 4.5.2. Legal Issues Related to PSI Re-use

The lack of legal certainty and ambiguity in terms of PSI re-use policy has been encountered more noticeably in some geoinformation markets than in others. One of the professional associations invited to take part in the survey was the **German Association of Cartographic Publishers in Germany** (VKViD) which has been in constant dialogue with the Federal State Survey Authorities on behalf of its membership. The issue here concerns the Federal State

---

<sup>53</sup> See IPEAG 2010 Inception Report, January 2010, page 11.

<sup>54</sup> See Die europäische Gesetzgebung als Motor für das deutsche GeoBusiness, BMWi, Februar 2009 on page 63. The estimates for the geoinformation market are from MICUS Management Consulting, 2008.

Survey Laws which permit the Federal State survey authorities to produce maps and related information services for end user consumption, these being first and foremost leisure activities. The VKViD has made several information requests under Federal and (where possible) Federal State freedom of information legislation to extract information from the relevant authorities. The responses have been diffuse and largely unhelpful to the Association's members who continue to be in a position where they are competing in commercial markets with publicly funded state authorities.

In Germany at least up until 4-5 years ago the role of data protection in the re-use of geoinformation was regarded as relatively unproblematic. However, as geoinformation based markets developed and the lobby for its commercial re-use grew this position changed. Responding to these concerns the Commission for Geoinformation Business (**GIW-Kommission**) set up in 2001 by the German Federal Ministry for Economics and Technology commissioned a series of studies looking specifically at the role of data protection in geoinformation based products and services.<sup>55</sup>

The studies produced on behalf of the GIW-Kommission, the reaction to them as well as related developments such as the Federal government's preoccupation with Google Street View<sup>56</sup> highlight the extent to which there continues to be dissent and disagreement regarding the role and scope of data protection in the re-use of geoinformation. The variance of legal opinion and wide variety of differing views, while useful on one hand, reveal a glaring legal uncertainty in this area. Legal uncertainty reflects itself in risk which in turn threatens to make the exploitation of geoinformation an unattractive proposition. More simply put legal uncertainty brakes innovation.

---

<sup>55</sup> See <http://www.geobusiness.org/Geobusiness/Navigation/publikationen.html>

<sup>56</sup> See footnote 41 above.

#### 4.6. Summary

This section has provided additional background on the environment in which the survey was conducted. Without this background it is submitted the IPEAG 2010 Project runs the risk of creating false impressions. The Project's outcome must not be allowed to imply that the PSI re-use world in Germany is in order. On the other hand, neither does it imply that the German PSI re-use market is under developed in comparison with other European markets.

The survey of the legal issues serves as a reminder that there are numerous impediments to the re-use of public sector information in Germany. Yet some of these impediments are only indirectly linked to the PSI Directive and hence the IWG. The table below attempts to summarise the legal issues and the relevant areas of law in Germany for the four market segments under consideration.

Market Segment	Legal issues	Area of law
Legal Information	<ul style="list-style-type: none"> <li>• Definition of PSB public task</li> <li>• Extent of PSB/Re-user competition</li> </ul>	<ul style="list-style-type: none"> <li>• Competition Law</li> <li>• Public Procurement Law</li> </ul>
Business Information	<ul style="list-style-type: none"> <li>• Definition of PSB public task</li> <li>• Extent of PSB/Re-user competition</li> </ul>	<ul style="list-style-type: none"> <li>• EUGH / URM / HGB</li> <li>• Competition Law</li> <li>• Public Procurement Law</li> </ul>
Weather Information	<ul style="list-style-type: none"> <li>• Definition of PSB public task</li> <li>• Extent of PSB/Re-user competition</li> </ul>	<ul style="list-style-type: none"> <li>• German Weather Service Law</li> <li>• Competition Law</li> <li>• Public Procurement Law</li> </ul>
Geoinformation	<ul style="list-style-type: none"> <li>• Definition of PSB public task</li> <li>• Extent of PSB/Re-user competition</li> <li>• Role of data protection</li> </ul>	<ul style="list-style-type: none"> <li>• State Survey Laws</li> <li>• Competition Law</li> <li>• Public Procurement Law</li> </ul>

Table 23: Summary of the legal issues and areas of law impacting PSI re-use in Germany.

The table above shows that although many different legislative norms are involved many of the problems have common roots, namely the definition of the public sector body's (PSB) public task and the extent to which competition is permitted. The table is also an important reminder highlighting the fact that just because there are few true exclusive agreements in Germany as understood by Article 11 of the PSI Directive, does not mean that there are no legal disputes concerning PSI re-use. The opposite is indeed the case. Further, many of these issues can be classified under the same chapter heading in the PSI Directive that encompasses Article 11, namely **non-discrimination and fair-trading**.

The occurrence of few true exclusive agreements can be attributed to the prevailing low awareness and lack of understanding of PSI re-use regulatory frameworks. Nevertheless, the market-based analysis indicates that German markets heavily dependent on PSI re-use have a market volume of some € 2,764 billion. The table below summarises the results of this analysis.

#### Public Sector Information (PSI):

#### Identification of potential Exclusive Agreements – Germany

GEOkomm IPEAG 2010 – Final Report – Autumn 2010

Relative Dependency of Key Information Market Domains on PSI Re-use			
Market Segment / Sub-segment <i>Primary Business Model</i>	Market Segment Dependency on PSI Re-use	Legal Issues Related to PSI Re-use	Estimated Market Volume (€million) 2009
<b>Legal</b>			
Legal publishers <i>Subscriptions</i>	<b>High</b>	PSB Competition Public Task Definition	480
Legal information providers <i>Subscriptions</i>	<b>High</b>	PSB Competition Public Task Definition	55
Distributors <i>Subscriptions</i>	Middle (↔)		250
<b>Total for market segment</b>			<b>785</b>
<b>Business</b>			
Company Information <i>Membership + Subscriptions</i>	<b>High</b>	Data protection EU Disclosure Laws	690
Directory Information <i>Advertising</i>	Middle (↑) / High	PSB Competition Public Task Definition	1,200
News Media <i>Subscriptions + Advertising</i>	Middle (↔)	PSB Competition Public Task Definition	1,200
<b>Total for market segment</b>			<b>3,090</b>
<b>Weather</b>			
Providers of weather information and Services <i>Subscriptions</i>	<b>High</b>	PSB Competition Public Task Definition	33
<b>Total for market segment</b>			<b>33</b>
<b>Geoinformation</b>			
Geo-marketing <i>Subscriptions</i>	<b>High</b>	Data protection	278
Planning / documentation systems <i>Consultancy + Publishing</i>	<b>High</b>	PSB Competition Public Task Definition	500
Navigation <i>Subscriptions</i>	<b>High</b>	Data protection	728
<b>Total for market segment</b>			<b>1,506</b>
<b>TOTAL</b>			<b>5,414</b>

Sources: Company annual reports, trade associations, market studies, oci estimates.

Table 24: Summary of the dependency of information market domains on PSI re-use and their market volume.

## 5. CONCLUSIONS

The aim of the IPEAG 2010 Project was to survey the German PSI re-use market on the data supply side as well as the demand side for cases of possible exclusive agreements as understood by Article 11 of the PSI Directive. The execution of the study, the reaction of those involved as well as the resultant leads to potential exclusive agreements reveal a lot about the current status of the German markets based on the re-use of public sector information. This section of the Final Report draws together a list of conclusions. These in turn form the basis of a number of specific recommendations which are offered in the following section.

### 5.1. Perspective is Essential to Understanding Local PSI Re-use Markets

The IPEAG 2010 Project came across three leads to possible exclusive agreements which upon further analysis are probably not exclusive agreements in the sense as understood by Article 11 of Directive 2003/98/EC. What can be concluded from this? That the German PSI re-use market has its house in order. Hardly. Many public sector bodies needed the issues explained to them. Most legal publishers in Germany (seen elsewhere as classic PSI re-users) do not regard themselves as PSI re-users and hence see no point in being involved in such a study.

The Inception Report required the determination of information market domains. This exercise involved an in depth analysis of where and how information flows in the German public sector. It also revealed areas not picked up previously where PSI re-use plays an enormous role. For instance, in the specific area of address data. These areas have hardly been covered in literature on the German PSI market before.

The study experienced difficulties obtaining valid information from both sides using the direct survey approach. Corrective action to address market segment representatives delivered information of higher evidential value and in doing so also revealed the highly networked structure of the communities involved. What to outsider resembles a “bramble bush”, the German business community is best seen in terms of interacting layers of networks. This is an important conclusion for disseminating information encouraging PSI re-use and for propagating solutions.

Awareness of PSI re-use remains nevertheless something of a problem. But creating awareness is only a part solution. The objective must be focussed towards getting people to act on their newly found awareness. Concretely, to get PSI re-use thinking into operational infrastructures.

**Conclusion:** Germany has large, strong yet traditional markets connected to as well as based upon the re-use of public sector information. The PSI Directive represents a new and, in the scheme of things, relatively recent impulse for these markets. Although a legal framework is notionally in place the specific aims and objectives of the PSI Directive have yet to percolate through into the operational infrastructures of both supplier and re-user of public sector information.

## 5.2. Seismic Change in the Regulatory Frameworks Surrounding PSI Re-use

The IPEAG 2010 Project by taking a “big picture view” has also revealed the slow, grinding yet fundamental changes that have taken place in Germany since the PSI Directive was enacted in 2003. These truly seismic legislative changes have had both a direct and an indirect impact on PSI re-use markets in Germany and will be considered as separate points.

### 5.2.1. Legislative Change Impacting All PSI-Re-use Markets

The main legislative initiatives that directly impact PSI re-use markets in Germany have been the gradual enactment of freedom of information legislation at the Federal and Federal State levels. The Bund enacted the Federal Freedom of Information Law in 2005. The Federal Freedom of Information Law which applies only to Federal authorities was described at the time as a “novelty” in the sense that it reversed the tradition of official secrecy (Amtsgeheimnis) which had dominated German administrative culture for decades.

The continuing importance of freedom of information legislation to the current discussion is the dependency the right of information re-use has upon it.<sup>57</sup> However, as noted in the introduction, freedom of information legislation across Germany as a whole is still very much a patch work, in terms of both coverage (i.e. 5 Federal States do not have freedom of information legislation) and content (i.e. the variance with respect to the rights and duties provided for by the legislation).

Also worth noting is that where the German Information Re-use Law (IWG) enacted in 2006 promotes the idea of official information as an economic asset to be re-used particularly by commercial organisations, Federal and Federal State freedom of information laws emphasise the empowerment of citizens. The two notions are not mutually exclusive but in Germany are still far removed from one another and have yet to find common ground.

One of the major issues the IPEAG 2010 Project had to wrestle with was the utter lack on understanding of the aims and objectives, and occasionally even the very existence, of EU and national PSI re-use legislation. Compared to countries like the United Kingdom, Ireland and Slovakia, Germany lacks an institution whose task it is to promote PSI re-use and oversee the operation of the regulatory framework.

In contrast the official bodies whose task it is to assist with the implementation of freedom of information legislation and oversee its application are the Federal and Federal State Commissioners for Data Protection and Freedom of Information. Whereas the respective laws accords the Federal and Federal State Commissioners rights and duties, the persistent lack of resources to effectively implement the legislation has been a constant and reoccurring theme.

By way of illustration, the implementation of the Freedom of Information Act 2000 in the UK was carried out over a five year period. Studies estimate that the application of freedom of information costs the UK taxpayer something in the region of € 50 - 60 million per year. In

---

<sup>57</sup> See Section 1.3 above.

Germany the Federal Freedom of Information Law entered into force less than three months after it was enacted. The Explanatory Notes to the draft legislation stated that no funding was necessary. While the political expediency at the time makes this point understandable, the fact remains that this essential regulatory framework and key enabler of PSI re-use leading in turn to productivity, growth and employment is grossly under resourced and as a result failing to optimise its potential.

### **5.2.2. Legislative Change Impacting the Business Information Market**

The business information market was directly affected by the Law on Electronic Trade Registers and Cooperatives Registers as well as Company Registers (EHUG)<sup>58</sup> which from 2007 completely re-structured institutional competences as regards publicity requirements. Many of the practical issues surrounding exclusive agreements were considered at this time. In particular concerns with respect to the fair treatment of third party commercial organisations operating in the same market spaces as a commercial organisation empowered to carry out a public task, were dealt with in the course of implementing this legislation and solutions found.

Although no exclusive agreements were actually forthcoming from the business information market and specifically from this area involving the regulation of publicity requirements, it has been essential to cover these developments in the Final Report as it is in this sector that the views of the legislator are their most clearly stated. The legislator also reveals its understanding of when the passage of information between a public body and third party constitutes transfer (i.e. “Weitergabe”) as opposed to re-use (i.e. “Weiterverwendung”). The experience of the business information market may well suggest solutions for restructuring the relations surrounding juris GmbH and other stake holders in the legal information publishing market.

The business information market is also likely to be materially affected by the Federal Registration Register (Bundesmelderegister – BMR). A consequence of the Federal Reform Act of 2007 the Bund now has the legal competence for the regulatory framework concerning the official registration of residents. To what extent the Bund will develop a central register or a more standardised version of the current registers held by local authorities is not yet clear. A legislative proposal was produced by the Federal Ministry of the Interior (Bundesministerium des Innern – BMI) for the last legislative period. For the current legislative period the ruling coalition government has made a formal commitment to take action on the Federal Registration Register.

### **5.2.3. Legislative Change Impacting the Geoinformation Market**

The seismic legislative changes that are having a direct impact upon the PSI dependant markets based on the re-use of geoinformation revolve around the implementation of the INSPIRE Directive. The acronym INSPIRE (Infrastructure for Spatial Information in Europe) represents the Directive 2007/2/EC of the European Parliament and of the Council establishing an Infrastructure for Spatial Information in the Community.

---

<sup>58</sup> See Section 4.3.2. above.

In Germany the INSPIRE Directive has been implemented for application amongst Federal authorities with the Spatial Data Access Law (GeoZG).<sup>59</sup> Each of the 16 Federal States are in the process of systematically implementing the INSPIRE Directive into Federal State law. At the time of writing all but one of the Federal States have enacted GeoZG equivalent legislation.<sup>60</sup>

Bearing in mind the issues being considered by the IPEAG 2010 Project noteworthy here is the nation wide consensus that has been built in a relatively short time in order to implement the INSPIRE Directive. The sheer size and scope of the work involved has forced cooperation across Federal, Federal State and municipal authorities (Bund-Länder-Kommunen). Leading in this respect has been the Federal Ministry of Economics and Technology (BMW) who have also integrated the voice of the business community through the work of the **GIW-Kommission** and in particular its **GeoBusiness** portal. Although the INSPIRE Directive is going to develop into a complicated networked system of norms, compared with freedom of information legislation in Germany, it is less likely to be a paragraph jungle and (hopefully) as a more structured landscape of norms will have strong systematic roots in public administration operations.

#### **5.2.4. Legislative Change with the Potential to Impact All PSI-Re-use Markets**

Lastly, in this section another recent development that warrants mentioning is the change to the Basic Law (i.e. the Federal Constitution) that facilitated the conclusion of the IT State Agreement (IT-Staatsvertrag). According to the German Federal Ministry of Interior the entry into force on 1<sup>st</sup> April 2010 of the IT-Staatsvertrag promises to herald a new era of cooperation between and across the Federation and Federal States as regards IT implementation and eGovernment.<sup>61</sup>

The IT-Staatsvertrag which involved a change to the Basic Law sets out the legal basis for greater cooperation and is an outcome of the Federal Reform II which was tasked with examining the financial relationships between Federal and Federal States. The IT-Staatsvertrag set up the IT-Planungsrat. The first meeting of the IT-Planungsrat took place at the Federal Chancellors Office (Bundeskanzleramt) on 22nd April 2010. The IT-Planungsrat's role is to further the interoperability of information technology solution implementing e Government programmes and derive better coordination and efficiency gains out of the €17 million spent annually.<sup>62</sup>

**Conclusion:** With the seismic change in the regulatory frameworks surrounding PSI re-use, coupled with the problem of implementation, Germany has a normative framework to facilitate possible PSI re-use but a weak operational base to actually drive PSI re-use. Also the scale and pace of change and the discernable lack of coordination has meant that whilst there is a lot of law enveloping PSI re-use markets there is, in proportion, little legal certainty. The lack of legal certainty acts as an enormous disincentive to both supplier and re-user to embrace innovation, increase productivity and create employment through the re-use of public sector information.

---

<sup>59</sup> See GDI-DE at See [http://www.gdi-de.org/de\\_neu/inspire/navl\\_direktive.html](http://www.gdi-de.org/de_neu/inspire/navl_direktive.html) .

<sup>60</sup> The exception is Rheinland-Pfalz but this is scheduled for 2010.

<sup>61</sup> See [http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2010/04/it\\_planungsrat.html](http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2010/04/it_planungsrat.html)

<sup>62</sup> See <http://www.initiated21.de/aktuelles/news/bundesinnenminister-dr-schaeuble-fordert-aufnahme-von-it-ins-grundgesetz>

### 5.3. Geoinformation is Leading the Way Towards PSI Re-use in Germany

The biggest, most networked information community to emerge from the IPEAG 2010 Project is that of geoinformation which in this context also includes environmental information. On the re-user side the study embraced some 200 respondents in this market sector alone. Professional networks are prominent in this area not only on the demand side but also on the supply side, for example the **Working Committee of the Surveying Authorities of the States of the Federal Republic of Germany (AdV)** as well as the **Geodateninfrastruktur Deutschland (GDI-DE)**. Also the **GIW-Kommission** which is a part of the German Federal Ministry for Economics and technology (BMWi) has also played an instrumental role in co-ordinating the interests of both the public and private sectors.

The implementation of freedom of information legislation spans an 11 year period from 1998 to 2009. And not all Federal States have enacted such a law. By direct contrast all 16 Federal States will have enacted legislation implementing the INSPIRE Directive by the end of 2010, in other words within a two year period from 2008 to 2010. One of the reasons attributable to this difference is that the INSPIRE Directive sets down a series of legalistic processes and timetables for its implementation. These proscribed processes and timetables in turn are a framework for progressive consensus building between all levels of the public administration.

In addition public sector authorities have also had some degree of prior experience in terms of access to environmental information. Probably, public authorities feel intuitively more comfortable with the prospect of sharing the information they held about the environment, i.e. the subject matter was defined, than information from registers and usually subject to a different set of regulations.

In support of this point it is noted that German experience as typified by the **PortalU<sup>®</sup>** service has been cited as an example of best practice and as a role model for the forthcoming Shared Environmental Information System – SEIS.

**Conclusion:** Of the four PSI re-use information domains considered by the IPEAG 2010 study geoinformation appears to be leading the way in Germany. This is attributable to a mixture of factors. Firstly, subject related public sector information is less restrained compared with that found and possibly bound in official registers. Secondly, recent technological change, in particular the ever increasing bandwidth on the internet, is more disposed to geoinformation driven products and services that depend upon images and pictures. Thirdly, the INSPIRE Directive provides a structure for its systematic implementation that filters right down to operational levels of public sector bodies and is largely missing in other legal frameworks relevant to PSI re-use.

#### 5.4. Transparency of the Public Task will Unlock Potential in PSI Re-use

Although the study revealed few if any real exclusive agreements as understood by Article 11 of Directive 2003/98/EC it has nevertheless flagged numerous problems surrounding PSI re-use in Germany that belong clearly to the heading of Article 4, namely **non-discrimination and fair-trading**.

The IPEAG 2010 Project has shown that there are issues involving fair treatment and competition in each of the four information market areas under review. Issues such as competition, transparency of public body proceedings and even access to official information all revolve around the core question of what is the nature and scope of the actual public task being carried out by the public body. This core question resonates and finds an echo in other EU Member States and will hopefully be addressed as a priority in the forthcoming review of the PSI Directive.

**Conclusion:** The definition of the public task is a core issue to be addressed by the legislator. This is particularly required where the public bodies are given a mandate to take part in commercial activities in order to cover their basic costs. Given the pressures upon the public purse together with the pressures on the public sector to construct information infrastructures, such as that required by the INSPIRE Directive, what in the past has been burdened by problems (i.e. commercial organisations carrying out public duties) could be repositioned as an opportunity for the future. For this to happen however, more transparent and PSI re-use friendlier models of public private partnerships are required. To be truly accepted and supported by the market the extent and scope of public tasks being carried out by such bodies have to be clearly stated and the operational arrangements made more transparent.

## 6. RECOMMENDATIONS

On the basis of the findings from the IPEAG 2010 Project as well as from the subsequent analysis and conclusions the following practical recommendations are offered with a view to unlocking the potential in PSI re-use markets in Germany.

### 6.1. Actively Promote PPPs as the Means of Developing PSI Re-use Markets

Public private Partnerships (PPP) are an established means with which public and private sectors play to their respective strengths in order to complete projects or fulfil a public task. While there is a strong tradition for PPPs in Germany the market has recently received a strong impulse with the creation in 2008 of the **Partnerschaften-Deutschland AG**.<sup>63</sup> The PPP model has been instrumental in building physical infrastructures,<sup>64</sup> there is no reason why the PPP model should not be used in building information infrastructures.<sup>65</sup>

The PPP model is increasingly attractive given the restraints on the public purse yet at the same time the pressures on public bodies to restructure their information assets. The INSPIRE Directive mentioned in this context above is being followed by the **Shared Environmental Information System (SEIS)**.

Both INSPIRE and SEIS are EU initiatives requiring the construction of information infrastructures to facilitate EU monitoring and reporting. Their implementation is resource intensive, yet indicative of future trends where the accelerating pace of technological change is putting ever increasing pressure on public bodies.

The influential **data.gov** and **data.gov.uk** initiatives in the US and UK respectively have highlighted the role the semantic web and linked data developments could play within the public administration. The pressure on resource restrained public bodies to embrace these technologies for their own use as well as to make data more freely available for third parties is substantial.

In Germany, the Federal government with the Bundersanzeiger Verlag has established a precedent for a PPP that has been accepted by the majority of stakeholders in its respective market. As a result the PPP produces annual financial documents which are available to third parties in XML or even XBRL format.

**Recommendation:** The IPEAG 2010 Project Team recommends that Public Private Partnerships (PPP) be promoted as an efficient, cost effective means with which to improve the use and management of information within the public sector. Further that the regulation of PPPs created for such purposes clearly defines the nature and scope of the public task involved and includes detailed information relating to the terms and conditions regarding the re-use of the public sector information by third parties.

---

<sup>63</sup> See <http://www.partnerschaften-deutschland.de/>

<sup>64</sup> See <http://www.bppp.de/bppp.php/cat/1/title/Startseite>

<sup>65</sup> See <http://www.dgi-konferenz.de/index.html>

## 6.2. Place PSI Re-use on Legal Reform Agendas

The study has highlighted the extent to which legislative change has occurred in Germany in the first decade of the 21<sup>st</sup> century. And that much of the legislative change has had a direct and indirect effect upon core PSI re-use markets.

While it would be a truism to state that legislative change is a continuous process, the IPEAG 2010 Project Team predicts that the seismic legislative changes indicated in the Final Report are likely to continue for some time yet. To cope with markets resting on “shifting sands” PSI re-use stakeholders in Germany would be well advised to be looking at how to minimise potential risks and at the same time exploit possible opportunities.

One such opportunity identified by the Final Report would be to actively place PSI re-use as a item on the agenda of legal reformers. The large scale problem of lack of awareness with respect to PSI and information use and re-use matters would be seriously confronted where the principles of PSI re-use and the issues surrounding PSI re-use could be included on the agenda of the institutions and committees that consider and plan strategic legislative change. Two specific instances recommended by the IPEAG 2010 Study Team are the **IT-Planungsrat**<sup>66</sup> and the **Enquete-Kommission Internet und digitale Gesellschaft**.<sup>67</sup>

**Recommendation:** The IPEAG 2010 Project Team recommends that the advantages of PSI re-use and the issues surrounding a beneficial PSI re-use policy be included on the agendas of Federal and Federal State bodies looking at the future of the information society in Germany. Suggestions from the Project Team are the IT-Planungsrat, the Enquete-Kommission.

## 6.3. Pre-empt Exclusive Agreements by Promoting Model PSI Re-use Licences

Finally, the turbulence and fluidity in the regulatory framework surrounding PSI re-use can be put to good use. While the IPEAG 2010 Project did not come across a pure example of an exclusive agreement as understood by the PSI Directive, it is still possible that such agreements could be considered, if not actually constructed, in the future largely due to a lack of awareness of the issues involved coupled with cautious and restrained thinking on the dissemination of public sector information.

The misunderstanding surrounding a suspected exclusive agreement from the geoinformation market is telling.<sup>68</sup> Particularly so, as it was an example involving a local authority holding geoinformation and a local firm that developed products and services upon such information. In other words, an example of the very source of huge PSI re-use potential in Germany. The example however should also be seen as a warning that, given the prevalent lack of awareness and understanding of the PSI Directive, the inadvertent construction of exclusive agreements in

---

<sup>66</sup> See section 5.4.2. above.

<sup>67</sup> See <http://www.bundestag.de/internet/enquete/>

<sup>68</sup> See section 2.7.1. above.

the future cannot be discounted. Analogous to the idea of “Privacy by Design”<sup>69</sup> one way to preempt such an occurrence would be to actively promote the use of model terms and conditions that are PSI re-use friendly.

In this regard the **GIW-Kommission** has produced a Model Contract under its GeoNutzung project.<sup>70</sup> Also, the **Geodateninfrastruktur Deutschland (GDI-DE)** is looking at the possibility of encouraging the use of Creative Commons licences for PSB across all areas of geoinformation re-use.<sup>71</sup>

Such licences derived from reliable, knowledge sources form a collective best practice and can be propagated swiftly through the professional networks on the supply as well as the demand side of PSI re-use in Germany.

**Recommendation:** The IPEAG 2010 Project Team recommends that public sector bodies be encouraged to use model licences constructed by their representative organisations. Further that the licences explicitly refer to the issues concerning exclusive agreements and the conditions under which they are permissible. In this way “**PSI Re-use by Design**” thinking would become an integral part of the construction and re-construction of information infrastructures being undertaken by public sector bodies.

---

<sup>69</sup> See [http://www.ico.gov.uk/upload/documents/pdb\\_report\\_html/privacy\\_by\\_design\\_report\\_v2.pdf](http://www.ico.gov.uk/upload/documents/pdb_report_html/privacy_by_design_report_v2.pdf)

<sup>70</sup> See <http://www.geobusiness.org/Geobusiness/Navigation/projekte,did=226964.html>

<sup>71</sup> See [http://www.gdi-de.org/de\\_neu/thema/2007/c\\_thema\\_impuls.html](http://www.gdi-de.org/de_neu/thema/2007/c_thema_impuls.html)

## 7. REFERENCES

### 7.1. Institutions and Organisations

- **data.gov.uk – UK Government**  
<http://data.gov.uk/>
- **data.gov – US Government**  
<http://www.data.gov>
- **DDGI - Deutsche Dachverband für Geoinformation e.V.**  
<http://www.ddgi.de/>
- **European Association of Directory Publishers (EADP)**  
<http://www.eadp.org/>
- **Federal Commissioner for Data Protection and Freedom of Information**  
[http://www.bfdi.bund.de/cln\\_134/Vorschaltseite\\_EN\\_node.html](http://www.bfdi.bund.de/cln_134/Vorschaltseite_EN_node.html)
- **Federal Ministry for Economics and Technology**  
<http://www.bmwi.de/>
- **Geodateninfrastruktur in Deutschland (GDI-DE)**  
[http://www.gdi-de.org/de\\_neu/start.html](http://www.gdi-de.org/de_neu/start.html)
- **Gesetze-im-Internet Portal**  
<http://www.gesetze-im-internet.de/>
- **GIW-Kommission**  
<http://www.geobusiness.org/Geobusiness/Navigation/giwk.html>
- **Information Commissioner (United Kingdom)**  
<http://www.ico.gov.uk/>
- **IWG-Netzwerk**  
<http://www.iwg-netzwerk.de>
- **Office of Public Sector Information**  
<http://www.opsi.gov.uk/>
- **Online Consultants International GmbH**  
<http://www.oci-gmbh.com>
- **Open Data Network – Deutschland**  
<http://opendata-network.org/>
- **PortalU® - German Environmental Information Portal**  
<http://www.portalu.de/>
- **Shared Environmental Information System (SEIS)**  
<http://ec.europa.eu/environment/seis/>
- **The Constitution Unit, University of London (UCL)**  
<http://www.ucl.ac.uk/constitution-unit/research/foi/index.htm>

## 7.2. Legislation and Explanatory Notes

- **PSI Directive**  
Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, OJ L 345/90, 31.12.2003.
- **Communication**  
Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Re-use of Public Sector Information–Review of 2003/98/EC of 7th May 2009.
- **German Information Re-use law (IWG)**  
Gesetz über die Weiterverwendung von Informationen öffentlicher Stellen (Informationsweiterverwendungsgesetz – IWG) (BGBL. I, S. 2913) vom 13. Dezember 2006.
- **Explanatory Notes (IWG)**  
Entwurf eines Gesetzes über die Weiterverwendung von Informationen öffentlicher Stellen (Informationsweiterverwendungsgesetz – IWG), BT-Drs. 16/2453 vom 25. August 2006.

## 7.3. Legal Analysis Resources List

### Legal Commentaries

- **Schoch, Friedrich**  
Informationsfreiheitsgesetz: IFG. Mit VIG und IWG, Kommentar  
Verlag C. H. Beck, 1. Auflage, 2008, Rund 600 Seiten, In Leinen, ISBN 978-3-406-54920-5, EUR ca. 58,00
- **Fluck, Jürgen / Theuer, Andreas (Hrsg.)**  
Informationsfreiheitsrecht mit Umweltinformations- und Verbraucherinformationsrecht  
IFG/UIG/VIG  
Kommentar, Vorschriften der EU, des Bundes und der Länder, Internationales Recht, Rechtsprechung, C.F. Müller, 2648 Seiten, Loseblattwerk in 2 Ordnern, ISBN 978-3-8114-9270-7, EUR 108,00 zur Fortsetzung

Das IWG wird in Kürze in diesem Kommentar behandelt.

## Other Related Works

- **Püschel, Jan Ole**  
Informationen des Staates als Wirtschaftsgut  
Duncker & Humblot, 2006, 391 Seiten, Br., ISBN 978-3-428-12065-9, EUR 78,00

## Legal Essays

- **Schoch, Friedrich**  
Der Entwurf eines Informationsweiterverwendungsgesetzes des Bundes  
Neue Zeitschrift für Verwaltungsrecht, 2006, Heft 8, Seite 872.
- **Altmeppen, Stefan / Kahlen, Christine**  
IWG – Neue Impulse für den Informationsmarkt - Entwurf der Bundesregierung für ein  
Gesetz über die Weiterverwendung von Informationen öffentlicher Stellen  
Multimedia und Recht, 2006, Heft 8, Seite 499.
- **Püschel, Jan Ole**  
Vom Informationszugang zur Informationsweiterverwendung  
Datenschutz und Datensicherheit, 2006, Heft 8, S. 481.