

PSI RE-USE :
IDENTIFICATION OF POTENTIAL
EXCLUSIVE AGREEMENTS
FRANCE REPORT

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Abbreviations used in this report

EA	Exclusive Agreement
EC	European Commission
EU	European Union
MEPSIR	Measuring European Public Sector Information Resources
PSB	Public Sector Body
PSI	Public Sector Information
UK	United Kingdom

Executive summary

This report provides a detailed overview of the activities carried out and the results of the assessment on the potential existence of exclusive agreements (EAs) between French Public Sector Bodies (PSBs) and re-users (Re-users) in the context of exploitation of public sector information (PSI).

The research, carried out between 8 December 2009 and 9 April 2010, over 1500 French PSBs and over 635 Re-users within the most valuable PSI Domains (Business Information, Geographic/Meteorological Information, Legal Information...) has yielded 5 leads to potential EAs.

Our research has identified 5 potential leads that could potentially be EAs. Two leads (Number 1 and 3) were reported by re-users, two others (number 2 and 5) by PSBs and one (Number 4) by the beneficiary of the exclusive right, to the extent that the concerned company has been entrusted with the exercise of a public task (“Délégataire de service public”) for that publication.

Lead 1 and 4 are found in the PSI Domain of legal information, lead 3 and 5, in the PSI Domain of scientific information (which is not in the scope of the PSI Directive) and lead 2, in the PSI Domain of social information.

Furthermore, the majority of the alleged potential EAs (Lead 2, 3 and 4) are located at a national level.

Among the 5 potential EAs reported, we suggest that one would deserve follow up by the appropriate authorities. One is justified because it is “*necessary for the provision of a service in the public interest*”. One seems not to be in force, but the EA should be formally terminated in good and due form.

Finally, the two others do not seem, in our view, to breach the PSI Directive¹ to the extent that the exclusive rights granted do not fall within the scope of the Directive.

We would like to thank the CADA-Administrative Documentation Access Commission for their support, as they provided us with the file of contact details of PSBs, and the different associations (GFII, Afigeo, SPDG, Geste, Aysel, Figec, SNE, AFMM, FNPS²) who have helped us in our research by sending the questionnaire out to their members and by providing us with relevant information.

¹ EU PSI Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information

² See Appendix 1 : list of partner associations

1 Introduction

This document is the final report of the study “PSI : Identification of potential Exclusive Agreements – France”, for assessing the existence of possible EAs concluded by Public Sector Bodies (PSBs).

The study was awarded in response to a call for tender under the name “*PSI : Identification of potential Exclusive Agreements – France*” published in 21 September 2009. The purpose of this contract, as part of the study on the assessment of the existence of EAs foreseen in CIP ICT-PSP Work programme 2009, is “*to collect relevant information from the public and the private side of the French PSI market (Supply and Demand) on the potential existence of Exclusive Agreements, in the light of Article 11 of the Directive.*”

Article 11 of the PSI Directive prohibits EAs :

“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 study was awarded by the European Commission to the serda Group, more precisely to serdaLAB, the laboratory of Economic Intelligence and market research of serda Group. The research was undertaken between 8 December 2009 and 11 May 2010. The Contract number is 30-CE-0309733/00-88.

The breakdown of the report is as follows :

- Chapter 2 describes the context,
- Chapter 3 presents the scope of the study,
- Chapter 4 highlights our approach on the subject,
- Chapter 5 introduces the methodology followed,
- Chapter 6 underscores the statistical results of the surveys,
- Chapter 7 describes each lead to potential EAs,
- Chapter 8 provides our assessment of each lead to potential EAs,
- Chapter 9 gives a thorough analysis of two EAs.
- Finally, chapter 10 presents some other issues related to some competition concerns in the PSI domain in France.

2 Context

The EU PSI Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, came into force on 31 January 2003 when the Directive was published in the Official Journal of the European Communities.

The PSI Directive has been transposed in French law, by the edict n°2005-650 of 6 June 2005, which modified the French law n°78-753 of 17 July 1978.

Public sector information (PSI) is an important raw material for digital content products and services. Broad cross-border geographical coverage is also essential in this context. Wider possibilities of re-using PSI should allow European companies to exploit its potential and contribute to economic growth and job creation.

In a Communication on the review of the PSI Directive published in 7 May 2009, the EC has deplored that despite its economic value, estimated at €27 billion, much of Europe's PSI is still not re-used. One of the remaining barriers to re-use is the existence of EAs, which can lead to unfair competition.

The PSI Directive forbids, as a general rule, the existence of EAs and the transitional period laid down in the directive for existing exclusive agreements ended on 31 December 2008.

In the light of Article 11 of the PSI Directive, the existing exclusive agreements have to be reviewed every three years in order to verify the conditions for granting such an exclusive agreement. Every EA has to be made transparent and made public. Every EA that does not qualify for the exception should have been terminated at the end of the contract and in any case, not later than 31 December 2008.

Many EAs between public sector bodies (PSBs) and third parties have already been phased out in several member states before the 31st December 2008 deadline. However, only two member states – the UK and the Netherlands – have identified possible EAs and their specific nature in their respective countries, before 31 December 2008 deadline. No other member state has taken such a systematic approach to identify and phase out these agreements.

As a consequence, the EC has launched a study for assessing the existence of possible EAs concluded by PSBs within several member States of the EU, including France, in accordance with the Communication on the review of the PSI Directive.

3 Scope of the study

3.1 Scope of “Document”

In the terminology of the PSI Directive, “**document**” is defined as “*any representation of acts, facts or information — and any compilation of such acts, facts or information— whatever its medium (written on paper, or stored in electronic form or as a sound, visual or audiovisual recording), held by public sector bodies*” and for which “*the public sector body has the right to authorise re-use*”.

The PSI Directive shall not apply to :

- documents the supply of which is an activity falling outside the scope of the public task of the PSBs, concerned as defined by law or by other binding rules in the Member State, or in the absence of such rules, as defined in line with common administrative practice in the Member State in question;
- documents for which third parties hold intellectual property rights;
- documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of the protection of national security (i.e. State security), defence, or public security; statistical or commercial confidentiality;
- documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;
- documents held by educational and research establishments, such as schools, universities, archives, libraries and research facilities including organisations established for the transfer of research results;
- documents held by cultural establishments, such as museums, libraries, archives, orchestras, operas, ballets and theaters.

Case of cultural data

The PSI Directive was implemented in French Law in a slightly different way. Cultural data are not explicitly excluded by the edict of 6 June 2005. As a consequence, they are included by default in the scope of the French law. However, it is possible to exclude them by creating licences and breaking the rule. According to French law, without licence, they are submitted under the directive's conditions as the other public data. **Nevertheless, the EC, Information Society DG, asked serdaLAB not to include cultural data in this study.**

3.2 Scope of “public sector body”

The definition of “**public sector body**” is taken from Directive 92/50/EEC as “*State, regional or local authorities, bodies governed by public law, associations formed by one or more of such authorities or bodies governed by public law*” where “*Body governed by public law*” means “*Any body that is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and having legal personality and financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law*”.

Case of “EPIC “ (public bodies with industrial and commercial activities)

In principle, data produced by EPIC should not be considered as public data. However, some EPIC have a double task : a commercial one and a “public service” one, ie public utility. In this latter, the data produced by EPIC can be considered as public data. EPICs are therefore included amongst the surveyed PSBs.

Case of “EPST” (public bodies which produce scientific and technological information)

Data of EPST are excluded of the study.

Case of private companies with public task

In France, the transposition of the PSI Directive has been enlarged : indeed, private entities in charge of a public task have been included within the scope of the law. Thus, all the administrations, local authorities and private entities in charge of public tasks are considered as public data producers.

Example of « half-public » companies :

As a rule, data generated by private companies with a public task are not made accessible since they are considered as commercial and industrial data. However, they can also produce some data which can be considered as public data. For instance, traffic data on motorway are managed by private companies which are in charge of the exploitation of motorways. These data are submitted to the Ministry of Transportation and consequently, are public data that can be made available for re-use.

3.3 Definition of re-use

Re-use means “*the 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. Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use.*”

Case of publication by DILA (Direction de l’Information Légale et Administrative- Legal and administrative Information Direction), Prime Minister services :

One of the mission of DILA (Direction de l’Information Légale et Administrative- Legal and administrative Information Direction) is to “*facilitate the access of citizens to public life and public debate, by publishing and distributing publications branded “the French Documentation” and the provision of documents.*”

Publication by DILA is not considered as re-use, since ‘re-use’ means “*the 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. Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use.*”

4 Approach

Firstly, we identified the Information Market Domains to be targeted. We focused on those PSI Domains which have the greatest PSI re-use potential and those areas where EAs have normally taken place in the past.

We then explored other studies carried out for the EC (PIRA, MEPSIR, MICUS) and those made specifically to identify EAs in the UK and the Netherlands. Our objective was to identify previous EAs in France and in the other countries in order to observe the PSI market domains in which these agreements had been concluded to facilitate and narrow which PSI domains should be object of our research.

Secondly, we also contacted the two national PSBs in charge of public data in France i) the CADA (Administrative Documentation Access Commission) and ii) APIE « Agence du Patrimoine Immatériel de l'Etat » (State's Intangible Assets Agency). We also contacted French trade associations such as GFII (the French Association for the Information Industry), and some other European analysts to have their opinion and views on this subject. Finally, we had a meeting with the Bensoussan law firm, our partner for this study.

4.1 Analysis of the different PSI studies

4.1.1 Analysis of previous European reports

The three main European reports we examined were PIRA (2000), MEPSIR (2006) and MICUS (2009) reports. We focused our analysis on the French results.

The **PIRA** report provided us information about a past EA between INPI (National Institute for Intellectual Property) and ORT, in the field of Business information.

We focused on the « non-discrimination » dimension of the **MEPSIR** study. With a non-discrimination rate of 63%, France was the second country, after Latvia, with the highest non-discrimination rate. So, the MEPSIR study highlighted that France was one of the most transparent countries, where unfair competition was the less developed, which could possibly meant fewer circumstances to find EAs.

4.1.2 Analysis of the EAs studies in the UK and the Netherlands

We examined the studies carried out in the UK and the Netherlands. It was a good exercise to identify the market domains in which they found EAs, and compare them to those identified in the MEPSIR one, in order to fine tune our own segmentation.

The EAs identified in the UK and in the Netherlands include a wide range of sectors : EAs in the UK have mostly been identified in the Cultural Information market domain (4 out of 9), but also in the Geographic, Business and Legal Information sectors. Similarly, the EAs identified in the Netherlands were identified in various PSI fields.

Those results concluded that we needed to look into every PSI market domain.

4.1.3 Information from the MEPSIR Study on EAs in France

The Information Society and Media Directorate General of the EC forwarded us with a copy of the EAs that were reported for France in the MEPSIR study .

Table 1 : EAs existing in the past in France

<i>URL of the organisation</i>	<i>Administrative level of the organisation</i>	<i>Main PSI domain</i>	<i>Subdomain</i>
http://www.journal-officiel.gouv.fr	National/federal	business information	public tender databases
http://www.assemblee-nationale.fr	National/federal	legal information	national legislation
http://www.senat.fr	National/federal	legal information	national legislation
http://www.insee.fr	National/federal	social data	population surveys

Source : MEPSIR Study

SerdaLAB has surveyed all of these PSBs. Only the “Assemblée nationale” did not answer.

4.2 Contact with national PSBs, associations and law firm partner

We contacted :

- The « Agence du Patrimoine Immatériel de l'Etat » (APIE – State's Intangible Assets Agency), the organisation in charge of intangible assets in France,
- The Commission d'Accès aux Documents Administratifs (CADA – Administrative Documentation Access Commission),
- Several associations (*See appendix 1*),
- Bensoussan law firm, our partner for this study.

Most of them had no information about existing EAs in France within the relevant PSI domains.

Conclusions about the domains to target

According to our first research, we concluded that there were probably very few EAs in France. The only EA established in the past was that of INPI and ORT which was phased out.

According to all the information gathered, we decided to look into every PSI market domain. We used the same PSI domain segmentation as in the MEPSIR study :

- **Business Information**, including Chamber of commerce information, official business registers, patent and trademark information and public tender databases;
- **Geographic Information**, including address information, aerial photos, buildings, cadastral information, geodetic networks, geology, hydrographical data and topographic information;
- **Legal Information**, including decisions of national, foreign and international courts, national legislation and treaties;
- **Meteorological Information**, including climate data and models and weather forecasts;
- **Social data**, including various types of statistics (economic, employment, health, population, public administration, social);
- **Transport information**, including information on traffic congestion, work on roads, public transport, and vehicle registration.

Moreover, since few EAs are known at a national level, we considered the possibility that potential EAs could occur at a local level. **Therefore we decided also to operate at a local level, and not only at a national and regional level.**

5 Methodology

The objectives were to :

- Carry out a web survey of the main PSBs, and if necessary follow up the research work by telephone calls and if possible through personal interviews. A minimum of 125 PSBs had to be the object of the survey.
- Consult the “demand side” of PSI in order to validate /check the information provided by PSBs. A minimum of 250 private PSI re-users should be consulted.

5.1 Survey of the PSBs

5.1.1 Identification of the PSBs to contact

In France, the law requires each PSB to choose a person responsible for access to PSI. This official is called PRADA, and is the person in charge of access to administrative documents. Only half of the PRADA have been designated up to now.

The “Administrative Documentation Access Commission” (CADA) provided us a list of contact details (phone numbers and e-mails) of 1439 PRADA in order to conduct the web survey for PSI holders. We were committed to use these contacts only for the PSI EA study and to submit to the CADA the results of the study, once approved by the EC.

To complete this contact list with all national level authorities, serdaLAB used the directory of French administration available on Internet : <http://lannuaire.service-public.fr/>

Finally, we surveyed 1487 PSBs. *See flying Annex 1 called surveyed PSB.*

Moreover, the PSI holders were informed about the survey by an article published in CADA's newsletter of December 2009. Here is the link which conducts to the whole newsletter : <http://www.cada.fr/fr/rapport/frame2.htm>

5.1.2 Survey writing up

In the email accompanying the questionnaire, we clearly informed that we were mandated by the EC to carry out a survey on EAs. (A mission letter from EC was annexed to the email). We informed about the PSI Directive and the fact that EAs were forbidden (article 11).

We asked the PSI holders the name of their re-users of PSI and their contact details, in order facilitate the re-users survey.

The PSB survey had been approved by our partner law firm Bensoussan.

The PSBs survey (in French) can be viewed at this URL address : http://193.251.13.192/etude_CE_prada/form_etude_CE_prada_v2.htm

See Appendix 2 to see the message accompanying the survey (translated in English)

See Appendix 3 to see the PSB survey (translated in English)

5.1.3 Web survey

We had 921 valid email addresses of PSBs. The questionnaire was administered online by sending an email three times :

- on 20 January 2010
- on 02 February 2010
- on 01 April 2010, only for national PSBs which had not answered then.

5.1.4 Pushing with a postal survey

We considered that sending out the survey and a letter by regular mail would have more impact on French PSBs. We focused on national PSBs by sending them the questionnaire, except for ministries. Indeed, the General Secretary for European Affairs asked us to stop our requests to ministries in order to centralize their responses. They received 14 responses :

- 7 responses from the Economics Ministry,
- Ministry of Food, Fishing and Agriculture,
- Ministry of National Education,
- Ministry of Interior, Overseas and local authorities,
- Ministry of Justice,
- Météo France,
- Agency of immaterial capital of the State (APIE).

The response of the General Secretary for European Affairs can be seen in “flying” Annex 6.

5.1.5 Pushing responses by Phone

After sending out the questionnaire, we have sought responses from national PSBs (except ministries) by telephone follow up. The national PSBs called were :
AFNOR, Agence de l'environnement et de la maîtrise de l'énergie (ADEME), Agence nationale pour la gestion des déchets radioactifs (ANDRA), Assemblée Nationale, Banque de France, BRGM, Conseil d'Etat, Conseil économique, social et environnemental (CESE), Cour des Comptes, Services du premier Ministre - DILA , EDF, Institut géographique national (IGN), Institut national de l'origine et de la qualité (INAO), La Poste, METEO France, Office national de l'eau et des milieux aquatiques, RATP, Services du Premier Ministre, SNCF, Institut national de l'audiovisuel (INA), Institut national de la consommation (INC).

5.1.6 Number of PSBs respondents

PSBs answered very seriously to the survey by look into all of their services. They often called us requiring details about the study. The low rate of responses from local authorities (10% of responses) is due to a lack of information about PSI. Most of them were not aware of the PSI directive.

Table 2 : Statistical results of PSBs survey

Level	Number of surveyed PSB	Number of respondents PSB	Response rate
National	50	35	70%
Local/Regional	1437	148	10%
TOTAL	1487*	183	12%

*Number of surveyed entities. The number of contacted persons was superior.

Table 3 : Typology of PSBs which have answered to the survey

Typology of PSBs	Number of responses
Communities of Communes (Communautés d'agglomération)	43
Town Councils (Mairies)	36
Ministries (Ministères)	23
Prefectures (Préfectures)	18
Departmental Councils (Conseils généraux)	11
Social centers (CAF/CNAV/CPAM)	8
Hospitals (Centres hospitaliers)	6
National Agencies (Agences nationales)	3
Regional Councils (Conseils régionaux)	3
National Offices (Offices nationaux)	3
Others	29
TOTAL	183

5.2 Survey of re-users

5.2.1 Identification of the private PSI re-users to consult

Several tracks have been necessary to create a database of re-users :

Firstly, serdaLAB sent a letter/email to the president and/or general director of re-users associations (GESTE, Afigeo, SPDG...). The objective was to present the study and ask them if they would accept to cooperate with the EU PSI EA study in providing information and sending the survey to their members.

See Appendix 1 to see the list of partner associations

See Appendix 4 to see the letter sent to the associations

Afigeo (<http://www.afigeo.asso.fr/>), the French association for geographic information, accepted to send us the French repository of geo-firms (which contains about 400 companies in geographic information).

The following associations - Aysel, Geste, Figec, FNPS, SPDG, SNE - offered their cooperation for the distribution of the questionnaire.

Besides, we have collected contact details of the actors from the professional edition market since we have been carrying out the annual market research of professional electronic information, in partnership with GFII, the French association for the Information Industry, for six years.

Moreover, PSBs provided us with some contact details of their re-users.

Serda also has a file of the legal directors in insurance and banking industry.

Concerning other re-users (GPS producers, weather forecast, tourism industry, full players on the web...), we searched contact details over the Internet.

Finally, we have gathered 635 PSI re-users email contacts, distributed as follows.

Table 4 : Number of re-users contacts by information segment

Information Segment	Number of re-users contacts
Business Information	191
Geographic/Meteo Information	483
Legal Information	79
Other	118
TOTAL	635

5.2.2 Survey writing up

We supposed that re-users benefiting from an EA would not inform about it. We have relied on other re-users, disadvantaged by a potential EA of one of their competitors to inform it. Therefore, we asked them if they knew any EAs in their information domain.

See in appendix 5 the email sent to re-users

See in appendix 6 the re-user survey

5.2.3 Web survey

We had 635 valid PSI re-users email contacts.

The questionnaire for re-users was administered online, by sending an email three times :

- 25 February 2010
- 05 March 2010
- 16 March 2010

We received 55 answers (online and oral), which corresponds to a 8,6% response rate.

5.3 Legal analysis

This stage consisted in analysing if the potential EAs reported are in accordance with Article 11 of the PSI Directive or if they don't comply with the PSI Directive. This legal analysis was done by a specialized lawyer from the Bensoussan law firm. The law firm designed a standard analysis grid (*See Appendix 7 and 8*) to be used to audit each of the potential EAs.

6 Statistical Results

6.1 Results of web survey of PSBs

We received 183 answers from PSBs. Amongst them, 134 came from the online questionnaire. The main PSI produced by surveyed PRADA are classified in the following table.

Table 5 : The most PSI re-used, according to surveyed PSBs

Type of PSI	Percentage
Deliberation and possible annexes	39,3%
Orders	36,0%
Possible decisions and annexes	34,8%
Budgets	27,0%
Annual reports	22,5%
Statistical data	16,9%
Studies	14,6%
List of award notice	12,4%
Electoral rolls	11,2%
Civil status	6,7%
Geographical data	3,4%
List of building permits issued	3,4%
Plan land	3,4%
Local Plan Planning	3,4%
Archives	2,2%
Cadastre	2,2%
Photographies	2,2%
Regulations and planning documents	2,2%

Source : serdaLAB

Less than 1% of surveyed PSBs created re-use licences.

Only 2 PSBs (University Hospital of Amiens and Afssa) answered that they have signed an EA with a re-user. The University Hospital of Amiens sent a copy of its EA.

See analysis of this EA in chapter 9

6.2 Results of web survey of private re-users

According to our survey, 48% of surveyed firms regularly re-use PSI, 30% sometimes and 22% never. 4 re-users mentioned some leads to potential EAs or unfair competition situation. These leads to potential EAs are listed in chapter 7.

One re-user answered that he has benefited from an EA, as part of a delegation of public service. This potential EA is analysed in chapter 9.

7 Details on the potential EAs reported

5 potential EAs have been reported : 2 in the domain of legal information, 2 in the domain of scientific information and 1 in the domain of social information.

2 potential EAs were reported by re-users (Leads 1 and 3), 2 by PSBs (Leads 2 and 5) and 1 by the re-user which has benefited from an EA as part of a delegation of a public service (Lead 4).

2 potential EAs had been concluded with local authorities and 3 with national PSBs.

We have been able to conduct a thorough analysis of two agreements (leads 4 and 5) since we collected enough information from the concerned parties or received a copy of the contract. (See the legal analysis in chapter 9).

As we did not receive any copies of other potential EAs reported (Leads 1 to 3), we have not been able to assess the eventual exclusive character of the agreements concerned. Therefore, we can only highlight and rely on the details that have been provided by re-users or PSBs. Nevertheless we give our preliminary view in chapter 8.

In all the cases reported below (except lead 5 – the only that sent the copy of the contract), the PSB concerned has conducted its own legal analysis of the EA, which concluded with a negative answer to the question of the existence of such agreement, in the scope of the PSI Directive.

Table 6 : Details on the 5 leads to potential EAs reported

LEAD 1	Details
PSB	The registry of Nanterre commercial court and the registry of Paris commercial court
Re-user	Lexbase (legal editor)
PSI Domain	Legal Information
PSI concerned	Court Decisions
Possible Exclusive elements of the contract	Re-useability of the court decisions of the two commercial courts
Duration of the contract	Not known. The agreement would not be written, but only oral.
Other relevant details reported	Despite several requests from 2 Re-users for several months to receive court decisions of these two most important commercial courts in France, they were rejected. In response, the two registries concerned evade the issue by responding : “We will see next year”, “the interface does not work “, or “Contact such service [which is a dead end]”.
Responses received from	The two commercial courts’ clerks answered they did not sign any EA about data of the trade registers, but they did not answer about the court decisions.

the PSB involved	
Response from the re-user concerned	The re-user concerned answered orally that he did not sign any EA.

LEAD 2	Details
PSB	Afssa (Agence Française pour la Sécurité Sanitaire des Aliments – Agency For Food Safety)
Re-user	Tec & Doc (Lavoisier) (scientific editor)
PSI Domain	Social Information
PSI concerned	- Data on recommended dietary intake for different population groups - General Food Directory
Possible Exclusive elements of the contract	Exclusive publishing and dissemination of the two PSI datasets concerned.
Duration of the contract	70 years (French legal term of copyright)
Other relevant details reported	Several EAs were signed between 1995 and 2003. At the conclusion of contracts, exclusivity was necessary, taking into account both the operating rules of this economic sector and the fact that Afssa was not intended to be a publisher (and therefore should delegate the publication of its data).
Responses received from the PSB involved	Afssa considers that exclusivities do not apply anymore because concerned data are now online. Third parties can freely re-use all data, subject to compliance with the rules of law governing the reuse of PSI, including information sources and dates of last update, in accordance with Article 12 of Law CADA. Nevertheless EAs have not been terminated in good and due form.
Response from the re-user concerned	Tec & Doc did not answer to our survey.

LEAD 3	Details
PSB	CNES (Agence française de l'espace - French Space Agency)
Re-user	Spot Images
PSI Domain	Scientific Information
PSI concerned	Satellite Images
Possible Exclusive	Exclusivity on the distribution of satellite images

elements of the contract	
Duration of the contract	Not known
Other relevant details reported	According to a re-user, the data concerned are owned by the CNES, which has funded and launched the satellite. According to the same re-user, the copyright belongs to CNES. CNES has an exclusive contract with SPOT for the distribution of images.
Response received from the PSB involved	Response of CNES : <i>“We have not identified any EA executed by the CNES under Article 11 of PSI Directive in particular among those passed between CNES and SPOT IMAGE company, whose generated data (which also lack the characteristic of "existing document") are the exclusions mentioned in § 2 of Article I of the Directive, in particular the following paragraphs a, b, c, e.”</i>
Response from the re-user concerned	Spot Image did not respond to the survey.

LEAD 4	Details
PSB	The Council of State (Conseil d’Etat)
Re-user	Dalloz (Legal ditor)
PSI Domain	Legal information
PSI concerned	Collection of decisions of the Council of State ruling on the litigation [Said Recueil Lebon]
Possible Exclusive elements of the contract	Dalloz publishes exclusively on paper a selection of law case from the Council of State as part of a delegation of public service.
Duration of the contract	The current contract dated August 22, 2006. The duration is not known.
Other relevant details reported	Other re-users can re-use concerned data electronically but not publish them in paper.
Response received from the PSB involved	The Council of State answered that they were not aware of any EAs.
Response from the re-user concerned	Dalloz answered that they have signed an EA for paper publication of a selection of case law as part of a delegation of public service.

Please see legal analysis in chapter 9.

LEAD 5	Details
PSB	University hospital of Amiens (CHU of Amiens)
Re-user	France Télévisions (broadcasting company)
PSI Domain	Scientific information
PSI concerned	Audiovisual Images
Possible Exclusive elements of the contract	The CHU grants France Televisions the exclusive right to film an event in its premises.
Duration of the contract	1 year
Other relevant details reported	France Télévisions owns the images and has the right to exploit them on an exclusive basis.
Response received from the PSB involved	The University Hospital of Amiens sent a copy of the EA.
Response from the re-user concerned	None

Please see legal analysis in chapter 9.

8 Assessment of the potential EAs reported

Although the factual basis for the assessment is small, we nevertheless appreciate to give our provisional views, which are captured in the table below.

Table 7 : Provisional assessment of leads to EAs reported

LEAD	PSI Domain	PSB	Re-User	Assessment
1	Legal Information	Registry of the Commercial Court	Lexbase	Having checked the website of the Registry of the Commercial Court, copies of decisions are published. Nevertheless according to the majority of re-users, it should make the difference between access and reusability. Access does not allow reusability. It seems that there is no official signed EA, but in fact, there is very certainly an advantage given to the private legal editor concerned, which has a preferential access to some decisions.
2	Social Information	Afssa (Agency for Food Safety)	Tec & Doc (Lavoisier)	Afssa considers that exclusivities do not apply anymore because concerned data are now online and third parties can now re-use all concerned data. Nevertheless EAs have not been terminated in good and due form.
3	Scientific information	CNES (Agence française de l'espace) – French Space Agency	Spot images	Concerned data are scientific data. This EA does not seem to be in the scope of the Directive 2003/98/EC.

We concluded that :

- Lead 1 would certainly qualify for further follow up.
- Lead 2 should ensure that the EAs will be terminated in good and due form.
- Lead 3 does not seem to qualify as exclusive deals, in the scope of the PSI Directive.

9 Analysis of potential EAs

Concerning the two EAs reported below, we collected enough information to make the following legal analysis.

As regards lead 4, Dalloz sent us enough information to carry out the legal analysis.

As regards lead 5, a copy of the contract was sent.

The following legal analysis was provided by the Bensoussan law firm.

9.1 Lead 4 : Licence analysis grid : The council of State and Dalloz

The analysis is made solely on the basis of information provided by Dalloz, as we have not been provided with a copy of the agreement.

The agreement is signed between (i) the “Conseil d’Etat” (Council of State), i.e. the French highest administrative court and (ii) a commercial publisher, Dalloz, for the paper publishing of the main decisions handed down by this court.

It seems that the parties consider that this agreement falls neither within the scope of Article 11 of the PSI Directive nor of Article 14 of the French Act of 17 July 1978, to the extent that Dalloz, although it is a commercial company, has been entrusted with the exercise of a public task (“délégataire de service public”) for that publication.

A question is whether this agreement could fall within the scope of Article 10, last paragraph of the French 1978 Act (“*the exchange of public information between the authorities listed in Article 1 [i.e. the French State, the local and regional authorities as well as the other public entities or private entities entrusted with a public task], in the pursuit of their public task, does not constitute a re-use within the meaning of this chapter*”) and Article 2 of the PSI Directive (“*Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use*”).

Each of these Articles, taken individually, implies that the use of PSI by private entities in the pursuit of a public task is not be regarded as “re-uses”; as a result exclusive arrangements for the provision of such type of data are excluded from their purview.

However, in our opinion, this position would not be in line with the spirit of the combined provisions of the French 1978 Act and the PSI Directive.

Pursuant to Article 11 of the PSI Directive: “The re-use of documents shall be open to all potential actors (...). Contracts or other arrangements between the PSBs holding the documents and third parties shall not grant exclusive rights. However, where an exclusive right is necessary for the provision of a service in the public interest³, 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 French 1978 Act contains a similar provision in its Article 14 : “*The re-use of public information shall not be subject to an exclusive right granted to a third party, except if such right is necessary for the exercise of a public task. 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.*”.

Additionally, the above provisions should be read in conjunction with recital 20 of the PSI Directive, which reads as follows : “*Public sector bodies should respect competition rules when establishing the principles for re-use of documents avoiding as far as possible EAs 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.*”.

These texts therefore precisely apply to exclusive arrangements for the re-use of PSI in the pursuit of a public task.

Under the French Act, a public task may be exercised only by “authorities listed in Article 1”, namely a public entity or private entity specifically entrusted with that mission; accordingly, it can be deduced that some communications of PSI between “authorities listed in Article 1” obviously constitute a “re-use”, notwithstanding the last paragraph of Article 10 of the same Act.

Besides, recital 20 of the PSI Directive takes into account exclusive arrangements both between PSBs and between PSBs and private partners.

Article 14 of the French 1978 Act seems to depart from Article 10, last paragraph (in the same manner as Article 11 of the PSI Directive departs from Article 2), by considering any EAs related to PSI concluded between two “*authorities listed in Article 1*” of the Act as exclusive arrangements for the re-use of information, the validity of which is strictly regulated by Article 14 of the French Act and Article 11 of the PSI Directive.

In our opinion, this seems to be the case of the exclusive arrangement concluded between the Conseil d’Etat and Dalloz, which precisely corresponds to the example given by the PSI Directive in its recital 20.

³ According to a Communication of the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions of 7 May 2009, the terms “mission de service public” (public task) and “services d’intérêt general” (service in the public interest) are interchangeable in the French language.

Table 8 : Analysis of the potential EA between the “Council of State” and Dalloz

No.	Theme	Analysis	Comments
1	Beneficiary of the exclusive right	Dalloz	Dalloz is a French publisher specialized in legal publications
2	Effective date ⁴	22 August 2006	We suppose that the effective date is the date when the agreement was signed
3	Term ⁵	Unknown	Ongoing contract
4	Renewal	Unknown	
5	Amendment	Unknown	
6	Purpose	The Conseil d’Etat grants Dalloz the exclusive right to publish a selection of its judgments on paper.	The agreement covers “ <i>information appearing in the documents produced (...)</i> ” by the Conseil d’Etat in the pursuit of its public task. This clearly covers PSI within the meaning of the law.
7	Nature of data	Case law data	Judgments are not protected by IP rights
8	Assigned rights	Right to publish on paper media	
9	Beneficiary of the assigned rights	Dalloz	
10	Reason for granting an exclusive right ⁶	The exclusive right would be justified by economic reasons: without an exclusive right, a publisher would not take the financial risk to publish the data.	Article 11 of the PSI Directive provides that an exclusive right may be granted if it is “ <i>necessary for the provision of a service in the public interest</i> ”. Recital 20 of the Directive states that

⁴ Under Article 11 of PSI Directive of the European Parliament and of the Council of 17 November 2003: “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”; Article 12 of French order No 2005-650 of 6 June 2005 also provides “Existing exclusive arrangements that do not qualify for the exception under paragraph 1 of this Article shall be terminated at the end of the contract and not later than 31 December 2008”.

⁵ Under Article 14 of French Act No. 78-753 of 17 July 1978: “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”.

			an exclusive right is justified for example where “ <i>no commercial publisher would publish the information without such an exclusive right</i> ”. Thus, it seems that the exclusive right granted to Dalloz may be justified under Article 11 of the Directive.
11	Financial terms	Unknown	
12	Publication of the agreement ⁷	No	
13	Reference to a public task	Unknown	
14	Agreement/ Performance Gap ⁸	Unknown	

Conclusion : Even if there is some uncertainty, the audited agreement seems to constitute an exclusive arrangement prohibited, in principle, under Article 11 of the 2003 Directive. However, it may reasonably be considered that the exclusive right granted by the Conseil d’Etat is justified, because it 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. Since the agreement between the Conseil d’Etat and Dalloz has been entered into on 22 August 2006, it should have been subject to a review in 2009; but this has not been the case. In this respect, the agreement is not compliant with Article 11 of the 2003 Directive.

⁶ Under Article 14 of French Act No. 78-753 of 17 July 1978: “the re-use of public information shall not be subject to an exclusive right granted to a third party, except if such right is necessary for the exercise of a public task”.

⁷ Pursuant to Article 11 of PSI Directive of the European Parliament and of the Council of 17 November 2003: “the exclusive arrangements established after the entry into force of this Directive shall be transparent and made public”; Pursuant to Article 12 of French order No. 2005-650 of 6 June 2005: “the content of the exclusive arrangements established [...] after 31 December 2003 shall be published in the Official Journal of the French Republic”.

⁸ If the agreement is not performed in compliance with its provisions (e.g.: other data is provided).

9.2 Lead 5 : Licence analysis grid : University hospital of Amiens and France Télévisions

- Agreement entitled : “Convention de tournage” (Filming Agreement)

Table 9 : Analysis of the potential EA between CHU Amiens and France Télévisions

No.	Theme	Analysis	Comments
1	Beneficiary of the exclusive right	France Télévisions	France Télévisions is a broadcasting company in charge of public TV channels in France
2	Effective date ⁹	5 October 2009	
3	Term ¹⁰	1 year	It is a one-off operation (shooting of a film), and is not to be renewed
4	Renewal	Not renewed by tacit agreement	
5	Amendment	No	Ongoing contract
6	Purpose	The CHU of Amiens grants France Télévisions: <ul style="list-style-type: none"> - The exclusive right to film a surgical operation (face transplant) performed by the doctors of Amiens CHU; - The property and exclusive right to exploit the film 	The contract does not cover existing administrative documents. However, once the film is created, the copy held by the CHU (University Hospital Centre) may be regarded as an administrative document. The compliance with the Directive is an issue only in case third parties request to access the film copy held by the CHU.
7	Nature of data	Audiovisual images	

⁹ Under Article 11 of PSI Directive of the European Parliament and of the Council of 17 November 2003: “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”; Article 12 of French order No 2005-650 of 6 June 2005 also provides “Existing exclusive arrangements that do not qualify for the exception under paragraph 1 of this Article shall be terminated at the end of the contract and not later than 31 December 2008”.

¹⁰ Under Article 14 of French Act No. 78-753 of 17 July 1978: “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”.

8	Assigned rights	<p>The CHU grants France Télévisions the exclusive right to film an event in its premises.</p> <p>France Télévisions owns the images and has the right to exploit them on an exclusive basis (article 6).</p> <p>France Télévisions provides Amiens CHU with a copy of the images. The CHU shall use them only for scientific or educational purposes.</p>	<p>The film copy held by the Amiens CHU may be considered as “<i>existing documents held by a public sector body</i>” within the meaning Article 1 of the Directive.</p> <p>The question is to know whether the re-use of these documents is subject to the Directive.</p> <p>Under Article 1.2 of the Directive “<i>This Directive shall not apply to: (...) documents for which third parties hold intellectual property rights</i>”. France Télévisions will be the owner of all of the intellectual property rights to the images.</p>
9	Beneficiary of the assigned rights		
10	Reason for granting an exclusive right ¹¹	<p>The exclusive right to film may be justified by medical security reasons (film crew of no more than 2 individuals) (article 2B)</p> <p>The exclusive right to exploit granted to France Télévisions is based on its intellectual property right as an author.</p>	<p>Article 11 of the Directive provides that an exclusive right may be granted if it is “<i>necessary for the provision of a service in the public interest</i>”.</p> <p>The exclusive right to film does not fall within the scope of the Directive; this raises the more general question of whether there can be discrimination against other TV channels that also would like to film the event.</p> <p>The exclusive right to exploit the images is justified by the fact that France Télévisions is an author. However, to the extent that there would be upstream discrimination in favour of France Télévisions, it would be reasonable to wonder whether other TV channels, for example, could require an access to the images.</p>
11	Financial terms	The exclusive right is granted free of charge. In exchange, France Télévisions grants CHU a royalty-free right to use the	

¹¹ Under Article 14 of French Act No. 78-753 of 17 July 1978: “the re-use of public information shall not be subject to an exclusive right granted to a third party, except if such right is necessary for the exercise of a public task”.

		images, but only for scientific and/or educational purposes.	
12	Publication of the agreement ¹²	No, not to our knowledge	
13	Reference to a public task	No	
14	Agreement/ Performance Gap ¹³	No, not to our knowledge	

Conclusion : In our opinion, the audited contract does not seem to breach Directive of 17 November 2003, to the extent that (i) the exclusive right to film in a government authority does not seem to fall within the scope of the Directive and (ii) France Télévisions is the author and owner of the copyright in the film.

However, this raises the more general question of whether granting to one TV channel an exclusive right to film an event and exploit the resulting images is discriminatory.

¹² Pursuant to Article 11 of PSI Directive of the European Parliament and of the Council of 17 November 2003: “the exclusive arrangements established after the entry into force of this Directive shall be transparent and made public”; Pursuant to Article 12 of French order No. 2005-650 of 6 June 2005: “the content of the exclusive arrangements established [...] after 31 December 2003 shall be published in the Official Journal of the French Republic”.

¹³ If the agreement is not performed in compliance with its provisions (e.g.: other data is provided).

10 Other issues revealed by the study

10.1. GIE Infogreffe

Several re-users from business information domain have denounced a possible monopoly of **GIE Infogreffe** regarding the publication of some business information. Since October 2009, GIE Infogreffe, which is an economic interest grouping of clerk's offices of commercial courts, has a monopoly on the dissemination of commercial acts and annual accounts from commercial courts and magistrates' courts and on the collective procedure decisions. Before October 2009, the INPI (Institute for Intellectual Property) provided a redistribution license. GIE Infogreffe has also a monopoly on Privileges Treasury and of social security data. There is no re-use licence for Privileges Treasury and of social security data. Finally, there is also no re-use licences for the extract Kbis database (the extract Kbis is the "identity card" of companies).

Therefore two potential issues are of concern :

- The first one is the fact that a body with private status manages PSI. According to an article in L'Expansion, a French business magazine, the turnover of Infogreffe could have reached 50 million euros in 2005, with a net margin between 20 and 50%.
- The second one is that GIE Infogreffe does not deliver re-use licence for some of the business PSI they hold: e.g. Privileges Treasury, Privileges of social security and the Kbis database.

10.2 IGN, the National Geographic Institute

In the light of the Decree n°2004-1246 of 22 November 2004 (Article 2), **IGN**, the National Geographic Institute, benefits from a commercial exclusivity on the sale of the geographic database called RGE ("Référentiel à Grande Echelle") to local and national PSBs. A complaint was registered on April 2007 against IGN, by SPDG, the French Geomatic Trade Union, with EC. The case is in progress.

10.3 AAA (Automobile Association Auxiliary) and the Central car file (FCA)

Until the 1st of September 2009, l'AAA (Automobile Association Auxiliary), which depends on the Committee of French car manufacturers (CCFA), had a monopoly on the management of the Central car file (FCA). Central car file (FCA) is the national register (for metropolitan France) drawn through the data of logbooks. It allows a tracking of registrations and parks using information sent by the prefectures. It is a computerized national database that lists the vehicles registered in the French territory. Previously, the file information was provided for free to the AAA, as part of an agreement with the Department of Transportation in the 1980s. Through their association, CCFA / AAA, French manufacturers (and indirectly the importers) had almost exclusive control of these data and could use them for commercial purposes. Foreign manufacturers could not access to this file.

A ministerial order of the 1st of September 2009 announced the creation of a new file : the SIV / SID (Decision Information System of the Vehicle Registration System) whose management is not more entrusted to French manufacturers but to the National Association of Securities Secured (ANTS), a service of the Ministry of Interior (ANTS) which makes available the file to third parties. As a consequence, CCFA / AAA will not have anymore a monopoly of access to the file.

Conclusion

The MEPSIR Study estimated that France was a non-discrimination country with few EAs. Our study confirms these conclusions, since there would be still two EAs in force (i) one that can in our view be justified and (ii) the other that may not be in accordance with Article 11 of PSI Directive.

The research was carried out between 8 December 2009 and 9 April 2010 and over 1500 French PSBs and over 635 Re-users within the most valuable PSI Domains (Business Information, Geographic/Meteo Information, Legal Information...) had been surveyed. The exercise has yielded 5 leads to potential EAs.

Two leads (Number 1 and 3) were reported by re-users, two others (number 2 and 5) by PSBs and one (Number 4) by the beneficiary of the exclusive right, to the extent that the concerned company, although it is a commercial company, has been entrusted with the exercise of a public task (“Délégataire de service public”) for that publication.

Lead 1 and 4 are found in the PSI Domain of legal information, lead 3 and 5, in the PSI Domain of scientific information (which is not in the scope of the PSI Directive) and lead 2, in the PSI Domain of social information.

Furthermore, the majority of the alleged potential EAs (Lead 2, 3 and 4) are located at a national level.

Among the 5 potential EAs reported, we suggest that lead 1 would deserve follow up by the appropriate authorities since it had been reported twice and even if it would be informal, it seems discriminatory on the market.

Even if it is not compliant with article 11 of the PSI Directive since it has not been published in the Official Journal of the French Republic and has not been subject to review in 2009, lead 4 is justified because it is “*necessary for the provision of a service in the public interest*”. Besides it seems not to cause issues on the legal information market since third parties can re-use concerned data electronically.

Lead 2 seems to no longer apply but the EA has not been terminated in good and due form.

The two others (Leads 3 and 5) do not seem to breach Directive of 17 November 2003 to the extent that the exclusive right does not fall within the scope of the Directive.

Finally, our study has highlighted some barriers to free competition in the French PSI market, especially in the geographic and business information domains (reported in chapter 10). Some, such as the case of National Geographic Institute (IGN), are already known by the EC.

Bibliographic and webographic sources

DIRECTIVE 2003/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 NOVEMBER 2003 ON THE RE-USE OF PUBLIC SECTOR INFORMATION :

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0098:FR:HTML>

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

PIRA Study (2001)

MEPSIR (Measuring European Public Sector Information Resources), Study, Helm et al ., 6/2006.

Assessment of the Re-use of Public Sector Information (PSI) in the Geographical Information, Meteorological Information and Legal Information sectors, MICUS, 12/2008.

Re-use of Public Sector Information – Review of Directive 2003/98/EC :

http://ec.europa.eu/information_society/policy/psi/index_en.htm

European Public Sector Information Platform

<http://www.epsiplatform.eu/>

Study about EAs in The UK

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

Study about EAs in The Netherlands

http://www.epsiplatform.eu/media/files/2628643_netherlands

French Law n°78-753 of 17 July 1978

French Administration Directory

<http://lannuaire.service-public.fr/>

Association of Private Meteorological Services

<http://www.primet.org/>

Apie (Agence du patrimoine immatériel de l'Etat) : Agency of immaterial capital of the State.

<https://www.apiefrance.com/>

Cada (Commission d'accès aux documents administratifs) : The commission of Access to administrative documents

<http://www.cada.fr/index.htm>

GFII (Groupement Français de l'Industrie de l'Information), the French Association for the Information Industry, represents private and public actors of the French professional electronic information market.

<http://www.gfii.asso.fr/>

GESTE (Groupement des éditeurs de services en ligne) : Association of online services and editors :

<http://www.geste.fr/>

AFNET (Association française des utilisateurs du net) : French association of Internet users

<http://www.afnet.fr>

AFIGEO (Association française pour l'information géographique), French Association for Geographic Information

www.afigeo.asso.fr

ACSEL (Association de l'économie numérique), Electronic Economy Association

www.associationeconomieenumerique.fr

FIGEC (Fédération nationale de l'information d'entreprise et de la gestion de créances), National Federation of business information and debt management

www.figec.com

SPDG (Syndicat professionnel de géomatique, ayant pour objectif d'aider au développement des entreprises et de l'usage de l'information géographique), Professional Trade Union of Geomatic

www.spdg-geomatique.org

Appendix 1 : List of partner associations (with public data re-users)

Information Domains	Name of the association	Activity of the Association
All	ACSEL	Numerical economy association
Geographical information	AFIGEO	French association for geographic information
All	AFMM	French mobile multimedia association
Business information	FBF	French banking federation
Business information	FFSA	French federation of insurance
Business information	FIGEC	National federation of business information and debt management
All	FNPS	National specialised press federation
All	GESTE	Online services publishing association
All	GFII	the French association for the information industry
All	SNE	National publishing trade union
Geographical information	SPDG	Geomatic professional trade union

serdaLAB warmly thank all the partner organizations.

Appendix 2 : Email message for PSBs accompanying the online survey

Attention to [* TITLE *] [* FIRST NAME *] [* NAME *]

Subject : Study commissioned by the European Commission to identify any exclusive agreements signed as part of the re-use of public data

Dear [* TITLE *] ,

SerdaLAB was commissioned by the European Commission to conduct a study to identify the exclusive agreements between public sector bodies (or private parties responsible for managing a public service and public data producers) and re-users. You will find attached the recommendation letter of the European Commission :
http://www.archimag.com/fileadmin/archimag/images/Etudes/Marketing/CE_Recommendation_letter.pdf

Under Article 11 of Directive 2003/98/EC of 17 November 2003 on the re-use of public sector information and transposed into French law "The re-use of public information shall not be subject to an exclusive right granted to a third party " and that, in order not to be discriminatory on the market.

However, in order to provide a service of general economic interest, an exclusive right to re-use of 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, but must be reviewed every three years. It is expected that these authorized exclusive agreements must be transparent and made public.

Therefore, I thank you kindly give us the exclusive agreements that you would have concluded in accordance with the mission entrusted to us. Compliance will be analyzed from a legal point of view, under the European Directive. The reported agreements will then be forwarded to the European Commission.

In this context, I thank you kindly respond to our online survey before February 10, 2010 :
http://193.251.13.192/etude_CE_prada/form_etude_CE_prada_v2.htm

If you have not signed any exclusive agreements, thank you to answer the first four questions and questions 26-31 to end.

If you have signed one or more exclusive arrangements, we thank you to answer as many times as necessary to the questionnaire and send us a copy of your agreement.

It only takes a few minutes. In case of no answer from you, we will allow us to call you.

Thank you in advance for your participation to this study. If you have already responded to our survey, please accept our apologies for this email.

If you're not the right person to contact, thank you to forward this email to the person

concerned, by clicking here.

If you have any questions or information to us, feel free to contact us.

Please accept, [* TITLE *] [* NAME *] , the expression of our highest consideration.

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PS : Your information will remain confidential and will only be used for this study.
According to the law 78-17 of 6 January 1978, you can access to your personal information held by Serda SAS and ask to be changed, added or deleted.

Appendix 3 : Online Survey for PSBs

The PSBs survey can be viewed at this URL address (originally in French) :
http://193.251.13.192/etude_CE_prada/form_etude_CE_prada_v2.htm

1. Your data and your public re-users

1. What are the public data that your PSB produces and broadcasts?

2. Has your organization put in place licenses for the re-use of public data ?

Yes

Not

3. Who are the re-users (except individuals) of your public data ? Thank you for giving the names of companies / organizations / companies entrusted with the exercise of a public task (such as EDF, GDF ...) and an email

2. Exclusive (s) Agreement (s) signed by your organization

4. Has your organization put in place one or more exclusive agreements for the re-use of public data produced ?

Yes

Not

If not, go to question 26

5. If yes, how many exclusive arrangements have you signed ?

If you have signed several agreements of exclusivity, thank you for completing this questionnaire (Questions 6-25) as many times as necessary.

6. What is the name of this exclusive agreement ?

7. What is the name of the organization / company with whom you have signed this exclusive agreement ?

8. What is the date of signature of this exclusive agreement?

9. What is the duration of this contract ?

10. Shall this contract be renewed automatically ?

Yes

Not

11. What are the public data involved in this exclusive agreement ?

12. What are the terms of the agreement (what are the rights granted by the public sector body to re-user) ?

13. Why has the agreement been concluded ?

14. What (s) type (s) of service or product does result from the public data used exclusively ?

15. Is the exclusive agreement for their internal use (for specific business needs re-use) ?

Yes

Not

16. Is the exclusive agreement for the external re-use (publication, website ...) of the public data ?

Yes

Not

17. Are the product or service created from public data considered as a public service ?

Yes

Not

18. Has this exclusive agreement made public ?

Yes

Not

19. If yes, how ?

20. Name and address of the re-user beneficiary of an exclusive agreement

21. Phone

22. Name of legal representative of the re-user

23. Email of this person

24. Name of the person responsible for re-use

25. Email of this person

3. Other exclusive agreements

26. If you are aware of the existence of one or more exclusive agreements with other companies, thank you to inform us here

4. Your signage

27. Name of your organization

28. Name of your service

29. Your Name

30. Your phone

31. Your email

Appendix 4 : Letter sent to national associations representative of private re-users

Subject : Study European Commission / Serda to identify exclusive agreements signed within the framework of the re-use of public data
Contract No. 30-CE-0309733/00-88

Dear XXX,

SerdaLAB was commissioned by the European Commission to conduct a study to identify possible exclusive agreements between public sector bodies (or private parties responsible for managing a public service and public data producers) and re-users, through the reuse of public data. You will find attached a letter of recommendation from the European Commission.

Under Article 11 of Directive 2003/98/EC of 17 November 2003 on the reuse of public sector information and transposed into French law, "*The reuse of public information shall not be subject to an exclusive right granted to a third party*" and that, in order not to be discriminatory on the market. 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. They must be reviewed every three years. It is expected that these authorized exclusive agreements must be transparent and made public.

The European Commission strongly suggests working with associations that can bring us information in the field. Your association is one of those whose members are likely to re-use public data. That is why we are contacting you today.

We would be very grateful if you would collaborate on this study, first giving us any information that might interest us regarding any exclusive agreements signed within your area of information, which could cause any obstacle to free competition. And secondly, if you could provide us with a list of contact information (email and phone) of your members, this would be of great value. Indeed, after a survey of public sector bodies, we will launch in February an online survey among re-users.

If you agree, we are committed to use this list of coordinates only in the context of this study and then we will destroy this list. The European Commission will be informed of your cooperation, and also committed to a strict use of those details as part of the study.

In exchange for your cooperation, your association will be named among the partner associations of the European study and the results of the study will be available after validation of the European Commission.

Thank you in advance for your cooperation. If no answer from you, we will allow ourselves to contact you the first half of February 2010.

Please accept, Madam / Sir XXX, the expression of our highest consideration.

Louise Guerre
President of Serda
Director of Studies
SerdaLAB
Group Serda
24, rue de Milan
75009 Paris
Tel: 01 44 53 45 00
Fax: 01 44 53 45 01
louise.guerre @ serda.com

Appendix 5 : Email sent to private re-users

Subject : Study Serda sponsored by the European Commission to identify any exclusive agreements signed as part of the reuse of public data (Contract No. 30-CE-0309733/00-88) - Please respond by 23 March 2010

If you have already responded to our survey, please accept our apologies for this email.

Dear XXX,

Your company is a potential public data re-user (studies, reports, statistics, databases, budgets, decisions, deliberations ...), in the areas of economic, law, cartography, social, transport information ... This is why you receive this email.

The company Serda was commissioned by the European Commission (DG Information Society) to conduct a study to identify possible exclusive agreements between public sector bodies (or private parties responsible for managing a public service and public data producers) and re-users. You will find attached a letter of recommendation from the European Commission.

Under Article 11 of Directive 2003/98/EC of 17 November 2003 on the re-use of public sector information and transposed into French law, "*The re-use of public information shall not be subject to an exclusive right granted to a third party*" and that, in order not to be discriminatory on the market. 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. They must be every three years to review. It is expected that these authorized exclusive agreements must be transparent and made public.

We thank you kindly give us the exclusive agreements that you would have signed so that in accordance with the mission entrusted to us, their compliance may be analyzed from a legal point of view, under the EU directive. This legal analysis of agreements will then be forwarded to the European Commission.

Any person having knowledge of any exclusive agreements can respond to our questionnaire or call us so completely anonymous.

Thank you kindly complete our online survey before March 23, 2010, by clicking the following link (or paste it into your browser) :
http://193.251.13.192/etudepsi/form_etudepsi.htm

If your business has signed one or more exclusive agreements with a public body, we thank you kindly answer the whole questionnaire and send us a copy of your contract (s) exclusivity (s) so that a legal analysis can be conducted by a lawyer.

Thank you in advance for your participation to this study.

If you have any questions or information, please contact us on 01 44 53 45 00 or 01 44 53 47 31 (direct line).

If you are not the right person to contact, thank you to forward this email to the concerned person.

Best regards,

Virginie Boillet
Research Manager
SerdaLAB
Group Serda
24, rue de Milan
75009 Paris
Tel : 01 44 53 45 00
Fax : 01 44 53 45 01
virginie.boillet @ serda.com

PS: Your information will remain confidential and will only be used in this study. According to the law 78-17 of 6 January 1978, you can always access to your personal information held by Serda SAS and demand it to be changed, added or deleted
Unsubscribe

Appendix 6 : Private re-user survey

The re-user survey is accessible with this URL link (originally in French) :
http://193.251.13.192/etudepsi/form_etudepsi.htm

1. Does your company re-use public data for commercial or non commercial use?

Steadily

Sometimes

Never

2. Do you know any exclusive agreements signed within the framework of the re-use of public data between public sector bodies and re-users ?

Yes

Not

3. If yes, thank you to contact Virginie Boillet 01 44 53 45 00 or email: @ virginie.boillet serda.com or mention them here

4. Does your company benefit from an exclusive contract with a producer of public data (Ministry, public institution, public agency, local government, court ...) for re-use one or more of its data ?

Yes

Yes, but it is no longer applied

Not

If not, thank you to refer to Question 17 (Signage)

5. If the exclusive agreement is no longer applied, thank you to explain why

If your company has signed an exclusive agreement with a public sector body, thank you to answer the following questions :

6. What is the name of this exclusive agreement ?

7. What is the name of the public body with whom you have signed this exclusive agreement ?

8. What is the date of signing of this exclusive agreement ?

9. What is the duration of this contract ?

10. Shall this contract be renewed automatically ?

Yes

Not

11. What are the public data involved in this exclusive agreement ?

12. What are the terms of the agreement (what are the rights granted by the public entity) ?

13. For what purpose has the agreement been signed ?

14. Which service (s) or product (s) have been created from the public data used exclusively ?

15. Has this exclusive agreement been made public ?

Yes

Not

16. If yes, how?

Your signage

17. Name and address of your company

18. Name of your service

19. Your Name

20. Your function

21. Your phone

22. Your email

Appendix 7 : LICENSE ANALYSIS GRID

“TO BE COMPLETED BY Name of public body”

- Agreement entitled: “TO BE COMPLETED”
- Dated “INSERT SIGNATURE DATE”
- Signed with “INSERT NAME OF SIGNATORY”

Number	Theme	Analysis	Comments
1	Beneficiary of the exclusive right		
2	Effective date ¹⁴		
3	Term ¹⁵		
4	Renewal		
5	Amendment		
6	Purpose		
7	Nature of data		
8	Assigned rights		
9	Beneficiary of the assigned rights		
10	Reason for granting an exclusive right ¹⁶		
11	Financial terms		
12	Publication of the agreement ¹⁷		

¹⁴ Under Article 11 of PSI Directive of the European Parliament and of the Council of 17 November 2003: “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”; Article 12 of French order No 2005-650 of 6 June 2005 also provides “Existing exclusive arrangements that do not qualify for the exception under paragraph 1 of this Article shall be terminated at the end of the contract and not later than 31 December 2008”.

¹⁵ Under Article 14 of French Act No. 78-753 of 17 July 1978: “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”.

¹⁶ Under Article 14 of French Act No. 78-753 of 17 July 1978: “the re-use of public information shall not be subject to an exclusive right granted to a third party, except if such right is necessary for the exercise of a public task”.

13	Reference to a public task		
14	Agreement/Performance Gap ¹⁸		

¹⁷ Pursuant to Article 11 of PSI Directive of the European Parliament and of the Council of 17 November 2003: “the exclusive arrangements established after the entry into force of this Directive shall be transparent and made public”; Pursuant to Article 12 of French order No. 2005-650 of 6 June 2005: “the content of the exclusive arrangements established [...] after 31 December 2003 shall be published in the Official Journal of the French Republic”.

¹⁸ If the agreement is not performed in compliance with its provisions (e.g.: other data is provided).

Appendix 8 : LICENCE ANALYSIS GRID PER LICENSOR

Agreement Clauses	C1	C2	C3	C4
Beneficiary of the exclusive right				
Effective date				
Term				
Renewal				
Amendment				
Purpose				
Nature of the data				
Assigned rights				
Beneficiary of the assigned rights				
Reason for granting an exclusive right				
Financial terms				
Publication of the agreement				
Reference to a public task				
Agreement/ Performance Gap				