

COMPANY & COMPANY OWNERSHIP HVDS

Please find here under the GFII contribution regarding the summary of the specific datasets in scope of the analysis for the “company and company ownership” thematic area.

Company and company ownership
<p>3 categories of data in scope:</p> <ul style="list-style-type: none"> - Companies and company characteristics - Companies ownership - Insolvency information <p>(more details are provided below)</p>

Companies and company characteristics	Companies ownership	Insolvency
<ul style="list-style-type: none"> • Name of the company; • Address; • Legal form; • Registration number; • Company identifier; • Member state where registered; • NACE code; • Registration number; • Founding date; • Dissolution date; • Name(s) of company legal representative(s); • Balance sheets/financial statements/annual accounts; • Number of employees; • Capital. 	<ul style="list-style-type: none"> • Name of the company; • Address; • Legal form; • Company identifier; • Member state where registered; • Name of the owner; • Month and Year of birth; • Nationality; • Percentage ownership or extent of Beneficial Interest held (in shareholding and/or voting rights); • Owner identifier. 	<ul style="list-style-type: none"> • Debtor's name; • Registration number; • Registered office or, if different, postal address; • Type of insolvency proceeding; • Time limit for lodging claims; • Date of closing main insolvency proceedings; • The court before which the decision opening insolvency proceedings is to be lodged.

A – Perimeter in terms of entities considered and public data sources

The very first point to notice is the perimeter considered.

Companies / businesses to be registered to the Business Register are about half of all businesses / enterprises existing in France.

From our point of view, to restrict the HVDS to companies only would not fit the needs nor the intention.

As a matter of fact, the English version of the PSI III directive mentions “Company and Company Ownership” when the French version mentions “Entreprises et propriété d’entreprises”.

If we consider all French businesses / enterprises, ie not companies only, different registers must be taken into account:

- the National Business Register [data holder: INPI / RNCS]
- the register of Craft businesses, ie “le Répertoire des Métiers” [data holder: Chambres des Métiers et de l’Artisanat]
- the register for commercial agents, ie “le registre des agents commerciaux » [Data holder: les greffiers de Tribunaux de Commerce / Clerks of local Business Registers.]
- the register of “agricultural assets” ie “le registre des actifs agricoles” [Data holder: APCA]
- the Agriculture Register, ie “le Registre de l’Agriculture » [Data holder: Chambres de l’Agriculture]
- the register of inland waterways businesses, ie “le registre de la batellerie artisanale” [Data holder: CNBA]

According to a French law published in May 2019, all these dedicated registers, **whose objective is the information of third parties**, will be all “integrated” in one register: “the General Register of Enterprises”, which should work from 2023.

It has *not* to be confused with the “Répertoire SIRENE” [Data Holder: INSEE], ie the national repertory of enterprises and their establishments, which is a “reference database” allowing in particular the legal identification of enterprises thanks to the allocation of a registration / identification number upon their setting up.

We could also add the Official Gazette of Civil and Commercial Announcements (the “BODACC”) [Data holder: DILA] which is also a very important public source of business information, as well as on insolvency proceedings.

So, to summarize, to consider companies and company register only as HVDS, would be very restrictive, even if it is the perimeter of the Business Register Interconnexion System and of the service provided via the e-justice portal (*not* to be confused with EBR) (please see the directive 2012/17, no longer into force as implicitly repealed by the directive 2017/1132).

The wording “Company owners” is not meaningful in terms of company law.

Either we talk about shareholders / associates or we talk of (Ultimate) Beneficial Owners (UBO) as defined in the 4th AML directive (2015/849) modified by the 5th AML directive (2018/843).



We do understand from the Company Ownership details provided here above that UBO are considered here and not shareholders / associates.

We agree with the idea to consider UBO data as HVDS as the 5th AML directive requires Member States to make some UBO data accessible in all cases to any member of the general public.

Insolvency data are of course essential, for both informing third parties as well as understanding “events” occurring during a business’ life.

All the datasets listed here above, to which we could also add the repertory of associations and the Official Gazette on associations and foundations, generate for sure significant socioeconomic services as they are daily used for:

- managing customers– supplier relationship (also called KYC / KYS) for all types and sizes of enterprises, including SMEs,
- managing trade credit (ie the payment delay granted by a supplier to its customers),
- being compliant with AML directives and their national transposition,
- being compliant with anti-bribery laws,
- detecting different kind of frauds,
- etc.

They for sure benefit a high number of users, in particular SMEs. These users won’t necessarily be the re-users of the datasets, but the users of the applications developed thanks to this data.

These datasets can for sure be combined with other datasets, especially through the national business identifier.

As such, they must be considered as HVDS.

B. Perimeter in terms of data / fields / documents

Companies and company characteristics

In terms of data and documents to be made available, we suggest to base the analysis on the articles 14 to 19 of the consolidated directive 2017/1132.

As we can notice, there is a lot of information **to be disclosed** by companies. In other words, this information **must** be available from the different registers to inform third parties.

And, as well mentioned in articles 14 and 15 of the directive, this is not only data but also documents like statutes.

It is then essential not to consider structured data only, but also PDF files of statutes / articles of association, minutes of (extraordinary) general meetings, and full annual accounts.

To complete the list of fields already mentioned here above, we suggest to use as examples the following documents:

- 1) provided by the data holder INPI / RNCS for its re-users (available into French only):

- data on registrations, modification & striking off the register, in a structured format: <https://www.inpi.fr/fr/download-file?id=36376>
- data from the Annual Accounts (in a structured format): <https://www.inpi.fr/fr/download-file?id=38267>
- Annual Accounts in a PDF format: <https://www.inpi.fr/fr/download-file?id=38266>
- Statutes / articles of association, minutes of general meetings etc. in a PDF format: <https://www.inpi.fr/fr/download-file?id=38263>

2) provided by the data holder INSEE for the re-users of SIRENE data (available into French only) : <https://www.sirene.fr/static-resources/doc/schemas%20de%20sortie%20API%20Sirene.pdf?version=1.26.4>
 Please also see this website: <https://www.sirene.fr/sirene/public/accueil>

3) provided by the data holder DILA for the re-users of BODACC data (available into French only) : https://echanges.dila.gouv.fr/OPENDATA/BODACC/Documentation/Documentation_technique_Bodacc_fevrier2015.docx

4) please find also here under an example of the kind of information we can find in a certificate of registration to the register of Craft businesses:



As a matter of fact, **an efficient re-use of public company / business data requires much more data fields than the ones listed here above, especially for fitting the needs described in terms of socio-economic services.**

According to the number of modifications / updates on this kind of data, a daily update is a minimum.

Companies ownership

In France, the following UBO data [Data holder: INPI / RNCS] will be soon accessible free of charge to any member of the general public:

- name, common name, pseudonym, first names,

- month & year of birth
- country of residence
- nationality of the beneficial owner
- **nature** and extent of the beneficial interest held.

Cf “nature and extent of the beneficial interest held”, it is important to rely on the full UBO definition in the AML directives, ie:

‘beneficial owner’ means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the **shares** or **voting rights** or ownership interest in that entity, including through bearer shareholdings, or **through control via other means**, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council;

(ii) **if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s),** the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point”

Insolvency

Regarding insolvency, we suggest to refer to the article 20 of the directive 2017/1132, as well as to the regulation 2015/848, especially its article 24.

In France, we can access data on insolvencies from:

- the National Business Register [Data holder: INPI/RNCS]
- the Official Gazette for Civil and Commercial Announcements (BODACC) [data holder: DILA].



According to the importance of this information, a daily update is a minimum.

C. Regarding the article 14 of the PSI III directive

“Such specific high-value datasets shall be: (a) available free of charge, subject to paragraphs 3, 4 and 5 »

Since the French “law for a Digital Republic”, also known as “Loi Lemaire” as well as other national laws, data on French businesses/enterprises, when available as PSI, are already available free of charge.

It is of course great from a re-user point of view, but **if and only if** data holders / public bodies do have enough resources (both human and financial) to provide a high-quality service when delivering the data as PSI / HVDS in terms of data completeness, data update (**a daily update is mandatory**), API availability, quality of the technical documentation etc.

If not, it has consequences on re-users. When re-users are professionals, like GFII ones, they have themselves professional customers who do not accept a deterioration of the service, whatever the reason. **In a way, PSI professional re-users consider data holders as “essential suppliers”, which – as such – must be “reliable ++”. But they must be granted the possibility to do so.**

Considering this reality, we would suggest to include in the future implementing acts the possibility for data holders to develop additional (optional for re-users) chargeable options / services enabling them to generate some resources contributing to maintain a high-quality PSI delivering service, especially when datasets are considered as HVDS.

“Such specific high-value datasets shall be: (b) machine readable”

As explained here above when referring to the article 14 & 15 of the directive 2017/1132, not all data are available in a structured format. It is the case of statutes / articles of association, minutes of general meetings, as well as full annual accounts, that are available into PDF format only and should be included in the HVDS perimeter.

“Such specific high-value datasets shall be: (c) provided via APIs; and (d) provided as a bulk download, where relevant.”

APIs are great, but for sure not always the panacea. So, data holders should be encouraged to provide both. For structured data bulk download, we do encourage csv or xml format.

“Such arrangements shall be compatible with open standard licences. The arrangements may include terms applicable to re-use ... »

We **strongly alert** on the fact to combine open licence and terms of re-use, especially for businesses datasets, which - de facto - include personal data as this data must be accessible to third parties.

In such a case, open license and terms of use are de facto contradictory as well identified by the WP29 in its 2013 opinion on the directive PSI II. Please see from § 7.4.

Let us describe the French situation at present time.

- In the Code for Relations between the Public and the Administration, there is a chapter dedicated to access to administrative documents and re-use of PSI.

In this chapter, there are 2 important articles to have in mind.

The first one provides that, to summarize, datasets including personal data should be anonymised.

But the second one creates some exceptions, and – among them – :

“2° Les documents nécessaires à l'information du public relatifs aux conditions d'organisation de la vie économique, associative et culturelle, notamment le répertoire national des associations et le répertoire des entreprises et de leurs établissements » (*free translation : documents required for informing the public regarding the organizational conditions of the economic, associative and cultural life, in particular / among others, the National Repertory of Associations and the SIRENE repertory*).

From our understanding as well as the reality at present time, all French businesses datasets listed here above can be made available without anonymisation, except for some sole entrepreneurs data included in SIRENE but not provided by INSEE as PSI (please see here under for more details).

- But terms of re-use require the re-user to comply with the GDPR and the national law on data protection.

What is happening practically speaking?

- Data on a particular business, and then including sole entrepreneurs or companies' legal representatives, are easily available from the different registers (please see also the CJEU Manni Case).
- Most of this data is also available as PSI.

But when an individual (a sole entrepreneur or a legal representative) contacts a re-user for, for example, exercising his / her right to be forgotten:

- a) he / she may contact only one / some re-users among many reusing the data,
- b) his / her personal data will remain available from the registers, as they *must* be,
- c) data erased by the re-user will come back with the next PSI update, as data holder still (has to) deliver them,
- d) the professional re-user legitimate interest, and the one of its own professional customers, are usually / de facto different from the individual's one.

In other words, re-users, as well as their own customers, are required to comply with GDPR and national privacy laws **for personal data mandatorily disclosed to the public for legal reasons as they are considered from a business / enterprise / professional point of view.**

We strongly underline how important it is to now deal with this contradiction, which is a problem for data holders, data re-users and their customers, as well as for individuals.

Such a contradiction must be fixed at EU level as:

- the GDPR is an EU regulation,
- business data are of course re-used a lot in the framework of exportations and importations,
- one of the PSI III directive's objectives is to encourage the development of pan-European applications (recital 18 of the PSI III directive).

And if some re-use purposes are not allowed, then such PSI should *not* be available according to an open licence.

Special case of sole entrepreneurs in the SIRENE repertory (Data holder: INSEE)

An article of the French Code of Commerce provides that sole entrepreneurs can require to INSEE that their data cannot be re-used for direct marketing purposes.

This requirement can be made when registering as a sole entrepreneur or through an INSEE webpage.

From 2017, SIRENE data are available free of charge as PSI / French HVDS ("données de référence") **according to an Open Licence.**

INSEE had then:

- no more information about the purpose of re-use of SIRENE data re-users,
- no other choice than stopping providing data on those sole entrepreneurs having required the non-disclosure, *even for a purpose of re-use other than direct marketing.*



Even the national business identifier was not delivered anymore. Re-users didn't know any more if the business was existing or not, which was highly problematic. The only way was to check in the different registers, whose role is to inform third parties.

It has evolved some months ago and, since then, re-users can know if the business exists and has required non-disclosure. Full stop.

Which does **not** resolve the problem for re-users having another purpose of re-use than direct marketing and is a "good" example of what may be the consequences of an open licence.



So, to summarize:

- either PSI including personal data, in particular those having to be publicly disclosed, can be re-used according to an open licence, and then all re-use purposes should be allowed,
- or some purposes of re-use are allowed or not allowed, which should be clearly defined, and it cannot be an open licence.

This should be discussed at EU level as one objective of the EC is to encourage the development of pan EU applications.

About the Gfii: Created in 1979, the Gfii, the French organization of information professionals (Gfii) is a unique association in the data landscape that brings together private and public data producers and re-users, such as the French Ministry of Interior, Total, Crédit Agricole, BNP Paribas or The French Ministry of Environment. The Gfii aims to promote the economy of data, that means the recognition of the costs necessary for their manufacture, maintenance, development and dissemination in an assumed commercial environment, which does not exclude free of charge data sharing, but which puts more emphasis on the interoperability of data, their valorization and their reusability. Our 10 working groups produce positions papers and white papers in order to help shaping the future of data policy in France and in the EU by offering balanced point of views about data and digital issues. The Gfii promotes a sustainable and ethical use of data and we work closely with our members for offering the most expert and efficient feedbacks about the implementation of data policies, for example, the Gfii was recently auditioned by the French Ministry of Finances about the Cloud Act and works regularly with the Ministry of Culture about data and artificial intelligence issues.

For more information: <https://www.gfii.fr/en/>