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WP2 – Research and Implementation assessments

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## Open Data France

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## OPEN DATA FRANCE

### Introduction

#### Definition

The opening of data (open data) is not expressly defined by law. Open data can be defined as public data that is freely accessible, available and reusable free of charge for purposes other than those for which it was initially processed and shared. Personal data, data relating to national security and data covered by legal secrecy are excluded.

But open data is also a movement consisting in "making available to citizens, civil society and economic actors, the data produced, collected or held as part of a public service mission and authorising their reuse for private or commercial purposes"<sup>1</sup>.

#### Background and Context

The justification for open data in France is not directly related to the fight against corruption. Transparency and integrity of public authorities is one of the objectives to be achieved through the free flow of data and knowledge.

Article 15 of the 1789 Declaration of the Rights of Man and Citizen states that "society has the right to hold any public official accountable for its administration". This provision creates a duty of accountability for the administration and could be considered as the constitutional basis for open data.

Even if France is now considered a pioneer<sup>2</sup> in this field after having followed the movement of Barack Obama and after having chaired the "Partnership for an Open Government" in 2016-2017, it should nevertheless be borne in mind that open data has met with strong resistance until very recently<sup>3</sup>. Access to administrative documents was a right<sup>4</sup> regulated by law under the control of an independent administrative authority (CADA) until 2016 when the opening of data became the principle and its supervision became the exception. **Access to data was therefore guaranteed in France but supervised.** Thus, opening the data implied **default access to** administrative documents and a **readjustment of the** legal framework for the right of access to data held by administrations. In addition to this issue, there was the issue of the protection of **personal data**, involved in documents intended to become accessible to the public. The **cost of anonymisation** for administrations and the **risk of re-identification** for citizens are not negligible, so these are only some of the likely justifications for the small steps France was taking in the field of open data. These reservations also maintained a legal

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<sup>1</sup> Conseil national du numérique, Avis n°2015-3 relatif au projet de loi pour une République numérique, 30 November 2015, p. 3

<sup>2</sup> The comparative study commissioned by the European Commission on the maturity of data openness in the various Member States ([Open Data Maturity 2018](#)) ranks France third after Ireland and Spain. [Source](#)

<sup>3</sup> Rapport Trojette) M.A. Trojette, « Ouverture des données. Les exceptions au principe de gratuité sont-elles légitimes? », Rapport au Premier ministre, 2013, 121 p. ; (Rapport Cadiet) L. Cadiet, « L'open data des décisions de justice », Rapport remis au ministre de la Justice, 2017, pp.30-31 ; v. également ce que laisse apparaître la lettre du Premier Ministre à la Cour des comptes du 4 mars 2019 mentionnant : « ...la mise en œuvre de la gratuité des données a fortement fragilisé ces opérateurs en déséquilibrant leur modèle économique et émet la recommandation de "redéfinir les modèles économiques des opérateurs en tirant les conséquences de l'ouverture des données publiques et de l'attrition des ressources propres correspondantes" » ; [source](#)

<sup>4</sup> The citizen's right of access to public information is expressly enshrined in the Act of 17 July 1978 on various measures to improve relations between the administration and the public (known as the CADA Act), which creates a Commission for Access to Administrative Documents ("*Commission d'accès aux documents administratifs*" CADA). This law defines "administrative documents" and excludes from the right of access administrative documents which may affect the exercise of the State's sovereign activities and the general interest. Several secrets are also protected (Government deliberations, national defence secrecy, public security, conduct of court proceedings). Personal data are also not open to access ("*non communicable*") and reusable (unless consent, anonymisation and reuse are authorised by law or by the regulatory authority).



framework that was considered too complex for public and private actors<sup>5</sup>. To rectify this situation, sectoral rules and a general law have been adopted (“Law for a Digital Republic”).

Nevertheless, with regard to **public procurement data**<sup>6</sup>, whereas open data officially entered the market in 2015 (see below), and the French Government presented an action plan on 3 April 2018 entitled “For a transparent and collaborative republic 2018-2020”<sup>7</sup>, it is essential to stress that access to public procurement information is not a new national issue in this area. On the contrary, access to public procurement data already conditioned the legality of a number of public procurement procedures. In addition, the three main principles of public procurement on which the effectiveness of competition policy depends (freedom of access to public procurement, equal treatment of candidates, and transparency of procedures) could not be achieved without providing access to data<sup>8</sup>. The **right of access to administrative documents** is therefore applicable to it and it is for this reason that several lines will be devoted to it.

In reality, as we will see, what the open data movement brings to public procurement law is the **transformation of the right of access into a requirement to publish essential public procurement data online** above a certain threshold. This obligation is accompanied by certain requirements to **standardize** this publication in order to allow for the reuse of data. **Restrictions** based on respect for **secrecy** and protection of **personal data** remain applicable (although readjusted to the GDPR). The effect of the opening of data on the economy and especially on effectiveness in terms of transparency and anti-corruption is questionable and, in any case, still awaited. However, it will not be the subject of this report, which is limited to the presentation of the open data regulations and their specification in terms of public procurement.

*(note to the reader)* The following presentation will deal in each theme first with the regulations resulting from open data in general and then with its specification in terms of public procurement. This demonstration is justified by the fact that the opening of public procurement data is only one of the components of data opening in France. The general principles are very often applicable in terms of open data for public procurement unless specific rules apply.

### *Regulatory sources and aims pursued*

#### **- *Open data (general framework)***

<sup>5</sup> <https://parlement-et-citoyens.fr/project/open-data-liberer-les-donnees-publiques/step/synthese-2>

<sup>6</sup> The obligation to publish data concerns

- Public contracts,
- Partnership contracts and
- Concession contracts.

v. [Decree of 22 March 2019 on essential data in public procurement](#)

Consequently, by the expression “public procurement” (“essential data of public procurement”, “public procurement law”, “opening of public procurement data”) we will refer in this study to these three types of contracts, without going into more detail unless this is necessary for the specific needs of the report transmitted (e. g. annexes: open data standards relating to public contracts, open data standards relating to concession contracts).

<sup>7</sup> <https://www.ouvrirlascience.fr/plan-daction-national-pour-la-france-2018-2020-lengagement-18-pour-un-ecosysteme-de-la-science-ouverte/>

<sup>8</sup> In this regard, Méлина Elshoud, “L'accès aux données de la commande publique”, *Revue Générale du Droit, Etudes et réflexions* 2018, n°3, pp. 3-7



The gap between the national legal framework and european<sup>9</sup> and global requirements was eliminated by the adoption of **sectoral rules in 2015 and 2016**<sup>10</sup> and then by the adoption of a global law, the Law for a Digital Republic of 7 October 2016.

**The Law for a Digital Republic of 7 October 2016 (LRN)**<sup>11</sup> is the "flagship law" in terms of opening up public data in France, insofar as it marks the transition from a logic of communication - under certain conditions - of administrative documents to a culture of spontaneous dissemination of data available within administrations in order to allow their exploitation and enhancement by potential beneficiaries of the right of access<sup>12</sup>. **Open data is now the principle and not the exception.**

It should be noted, however, that **the LRN contains other components** besides data and knowledge flow; it is also about:

- the protection of rights in the digital society (net neutrality, data portability, platform loyalty and consumer information, personal data protection) and
- access to digital for all (digital in the territories, digital for the benefit of fragile audiences).

The "**open data**" component of the LRN involves:

- Opening public data by default;
- The creation of a public data service;
- The opening of data of general interest;
- Free access to public research and data exploitation.

The **three main objectives**<sup>13</sup> that public data opening policies pursue are:

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<sup>9</sup> By the ordinance of 6 June 2005, the 2003 Directive (Public Sector Information) was transposed by amending the CADA law and creating the right to reuse public information. Until 2014, the CADA law was considered too complex and with many shortcomings preventing the potentialities of open data: <https://parlement-et-citoyens.fr/project/open-data-liberer-les-donnees-publiques/step/synthese-2>

<sup>10</sup> Texts adopted in 2015 with a view to the introduction of open data in France:

- Ordinance No. 2015-899 of 23 July 2015 on public procurement had required the provision of "essential data" on markets (repealed by [Ordinance No. 2018-1074 of 26 November 2018](#));
- Law n° 2015-990 of 6 August 2015 for growth, activity and equal economic opportunities ( "Macron" Law) which set up open data in the field of transport;
- Law No. 2015-991 of 7 August 2015 on the new territorial organization of the Republic ("NOTRe" Law), which required local authorities with more than 3500 inhabitants to make their public information accessible online;
- Law n° 2015-992 of 17 August 2015 on the energy transition for green growth ("TECV" Law) which organized the provision of energy communication data;
- Law n° 2015-1779 of 28 December 2015 on free access to and re-use of public sector information ("Valter" Law). This law affirmed the free reuse of data but maintained the use of fees "when[administrations were] required to cover a substantial part of the costs related to the fulfilment of their public service missions from their own revenues". (Article 5) ;
- Law n° 2016-41 of 26 January 2016 on the modernisation of our health system, specifying the procedures for making data from the health system available.
- Ordinance No. 2016-65 of 29 January 2016 on concession contracts providing for the provision of essential concession data (article 53)

<sup>11</sup> [Law n° 2016-1321 of 7 October 2016 for a Digital Republic](#)

<sup>12</sup> CADA, CNIL, [Practical Guide to Online Publication and Reuse of Public Data](#) ("Open Data"), Presentation of the Legal Framework for Data Opening (hereinafter "CADA/CNIL Guide -on Open data-"), February 2019, p. 3

<sup>13</sup> CADA/CNIL Guide, *op. cit.* p. 3; see also the objectives of opening up public data: "Data produced and held by the State constitute an essential resource to boost democratic life (transparency and consultation), stimulate economic and social innovation, and even improve the very functioning of the State (decompartmentalization, better management of public policies, etc.)" source: <https://www.gouvernement.fr/action/l-ouverture-des-donnees-publiques> (updated on 15 May 2017)



1. Strengthening the transparency of administrative action and democratic life by sharing experiences and good practices, dialogue and citizen participation;
2. Improving public organization and management;
3. Stimulating economic innovation through the creation of new services.

The **10 main principles of data openness** (also applicable to public procurement) are that the data are<sup>14</sup>:

- i. complete,
- ii. primary,
- iii. up to date,
- iv. accessible,
- v. electronically readable by a machine,
- vi. accessible without discrimination,
- vii. available in open formats,
- viii. available under open licenses,
- ix. accessible in a sustainable way online,
- x. without any cost of use.

#### - **Open data in public procurement**

In 2015 a series of regulatory texts were adopted in order to make open data applicable to public procurement. The main ones are:

- **The Decree of 25 June 2015 on the free re-use of the economic databases of the Directorate of Legal and Administrative Information (DILA);** according to this decree, the public information of the DILA on economic data is made available to the public free of charge, by electronic means or on computer support, for re-use. The economic data targeted are data from the following databases:
  - BOAMP: Official Bulletin of Public Procurement Announcements;
  - BALO: Official Bulletin of Mandatory Legal Announcements;
  - BODACC: Official Bulletin of Civil and Commercial Announcements.
- **Order No. 2015-899 of 23 July 2015 on public procurement:** This Order of the Minister of Economy, Industry and Digital Technology was issued on the basis of article 42 of Act No. 2014-1545 of 20 December 2014 on simplifying business life and laying down various provisions for simplifying and clarifying the law and the administrative procedures. This is the text that **transposes into French law the European directives of 26 February 2014 on public procurement in the** so-called "traditional sectors" and "special sectors". It resembled, in a single text, provisions hitherto scattered into seventeen different texts and thus constituted a first step in the adoption of a future Public Procurement Code. It led to the adoption of **three decrees in 2016**<sup>15</sup> organizing the implementation of open data for public procurement. The **essential data for public procurement and concession contracts** were initially defined by the Order of 14 April 2017 on essential data for public procurement (amended by the Order of 27 July 2018). However, Order **No. 2015-899** and the various concretization texts

<sup>14</sup> <https://www.economie.gouv.fr/daj/ouverture-des-donnees-commande-publique>

<sup>15</sup> Under the provisions of the 2016 decrees, the buyer had to offer free, direct and complete access to essential data on his buyer profile on 1<sup>st</sup> October 2018 (article 107, decree n°2016-360 of 25 March 2016), defence or security contracts (article 94, decree n°2016-361 of 25 March 2016) and concession contracts (article 34, decree n°2016-86 of 1<sup>st</sup> February 2016), except for information which disclosure would be contrary to public order. The essential data to be published were initially defined by the decree of 14 April 2017 relating to essential public procurement data, amended by the decree of 27 July 2018; Bruno Koebel, "Open data and public procurement: time for transparency", *La Semaine Juridique, Ed. Administrations et Collectivités Territoriales*, n°46, Fiche pratique 2312, 19 November 2018, Lexinexis, 3p. ; see also CADA/CNIL Guide, *op. cit.* , p. 7; Méline Elshoud, "L'accès aux données de la commande publique", *Revue Générale du Droit*, Etudes et réflexions 2018, n°3, pp. 9-11



mentioned above were repealed by Order No. 2018-1074 of 26 November 2018 on the legislative part of the Public Procurement Code.

- Thus, in terms of the legal basis, the opening of public procurement data is currently provided for by:
  - **Articles L. 2196-2 (public procurement)<sup>16</sup> and L. 3131-1 (concession contracts)<sup>17</sup> of the legislative part of the Public Procurement Code.** These provisions create the obligation for purchasers (public contracts) and licensing authorities (concession contracts) to make essential public procurement<sup>18</sup> or concession contract data accessible in an open and freely reusable format, subject to the provisions on confidential information and public order requirements.
  - **Articles R.2196-1 (public procurement)<sup>19</sup> and R. 3131-1 (concession contracts)<sup>20</sup> of the regulatory part of the Public Procurement Code.** These provisions provide that the buyer or

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**<sup>16</sup> ARTICLE L2196-2 PUBLIC PROCUREMENT CODE [PROVISION OF ESSENTIAL DATA BY PURCHASERS - PUBLIC CONTRACTS]**

Under conditions and subject to the exceptions provided for by regulation, the buyer shall make essential market data accessible in an open and freely reusable format, except for those whose disclosure would be contrary to the provisions of Article L. 2132-1 or contrary to public order.

Article L. 2132-1 Public Procurement Code (confidentiality)

The buyer may not disclose confidential information of which it has become aware during the procurement procedure, such as information the disclosure of which would violate business confidentiality, or information the disclosure of which could harm fair competition between economic operators, such as information during consultation of the total amount or detailed price of tenders.

However, the buyer may ask economic operators to consent to the disclosure of certain confidential information they have provided, specifically designated.

The buyer may impose requirements on economic operators to protect the confidentiality of the information it communicates in the context of the procurement procedure.

<sup>17</sup> Article L3131-1 Public Procurement Code [Provision of essential data by the concessional authority - concession contracts]

Under conditions laid down by regulation, the concessional authority shall make the essential data of the concession contract accessible, in an open and freely reusable format, subject to the provisions of Article L. 3122-3 and with the exception of information the disclosure of which would be contrary to public order.

Article 3122-3 of the Public Procurement Code (confidentiality)

The concessional authority may not disclose confidential information held by it under a concession contract, such as information the disclosure of which would violate business confidentiality, or information the disclosure of which could harm fair competition between economic operators, such as information in the course of consulting the overall or detailed value of tenders.

However, the authority may require economic operators to consent to the disclosure of certain confidential information they have provided, specifically designated.

The authority may impose requirements on economic operators to protect the confidentiality of the information it communicates in the context of the concession contract award procedure. ]

<sup>18</sup> Essential data" is used to refer to the *minimum* data representative of a public contract that must be published as part of open data. They are set by the Order of 22 March 2019 relating to essential data in public procurement (referred to as Annex 15)

<sup>19</sup> Article R2196-1[Provision of essential data - public procurement]

The buyer offers, on his buyer profile, free, direct and complete access to essential market data meeting a requirement whose value is equal to or greater than 25,000 euros excluding tax.

These essential data include:

1° The procurement procedure;

2° The content of the contract;

3° The performance of the contract, in particular, when necessary, on its amendment.

An order of the Minister of the Economy annexed to this Code sets out the list of these essential data and the procedures for their publication.

<sup>20</sup> Article R3131-1[Provision of essential data - concession contracts]

The licensing authority shall provide free, direct and complete access to the essential data of the concession contract on its buyer profile.

These essential data concern:

1° The conclusion of the contract;





grantor authority must offer **free, direct and complete access to essential data** on its buyer profile for **public contracts** [with a **value of 25 000€ or more excluding tax**] and concession contracts. The essential data relate to the award, content, performance and possible amendment of the contract or concession contract.

- **The "Order ("arrêté") of 22 March 2019 on essential data in public procurement"**<sup>21</sup>, annexed to the public procurement code,<sup>22</sup> has specified the essential data of public procurement (public procurement and concession contracts). Thus, now<sup>23</sup> **in Annex 15 of the Public Procurement Code** are the lists of data to be published on buyer profiles as well as the procedures for their publication (formats, standards and publication nomenclatures). Annex 15 of the Public Procurement Code therefore constitutes the **reference text of the** French legal system in terms of the procedures for setting up open data for public procurement (see details below).

As the **Legal Affairs Department of the Ministry of the Economy** is responsible for the implementation of this decree<sup>24</sup>, **a technical information note has been published** on "[Publication of essential data on public procurement](#)"<sup>25</sup>, as well as on several other topics concerning buyers<sup>26</sup>.

In terms of **objectives**, the opening of public procurement data aims to satisfy both the three general objectives of Open Data mentioned above. As explained by the Legal Affairs Department (DAJ) of the Ministry of the Economy, Finance, Action and Public Accounts:

"The requirement for transparency and openness of public procurement data serves several purposes: it is likely to contribute to the **prevention and fight against corruption**, the **sound management of public funds**, the **management of procurement policies** and the **economic development of companies**, which will be able to use this data either to better meet the needs of public purchasers or to develop **new services** to improve public procurement policies. "»<sup>27</sup>.

However, it should not be forgotten that the sharing of public procurement data **also aims to make competition policy more effective**, and has been so for a long time<sup>28</sup>.

The DAJ, proposes [infographics](#) [see Annexes C and D of the present report] listing the various reasons for opening up public procurement data: improved knowledge and evaluation of public procurement,

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<sup>2°</sup> The content of the concession contract;

<sup>3°</sup> The performance of the contract, in particular where necessary, its amendment.

An order of the Minister of the Economy annexed to this Code sets out the list of these essential data and the procedures for their publication.

<sup>21</sup> [Order of 22 March 2019 on essential data in public procurement](#)

<sup>22</sup> The decree relating to essential data was annexed to the Public Procurement Code by the [Decree of 22 March 2019 containing the preliminary annex to the Public Procurement Code](#) (entered into force on 1 April 2019)

<sup>23</sup> This decree brings together the provisions of three decrees from 2016 previously described (see basic note on page 13)

<sup>24</sup> Its competence to coordinate the implementation of open data for public procurement is provided for in Article 3 of the

[Order of 22 March 2019 on the preliminary annex to the public procurement code](#)

<sup>25</sup> "Opening of public procurement data" (04/04/2019): <https://www.economie.gouv.fr/daj/ouverture-des-donnees-commande-publique>

<sup>26</sup> <https://www.economie.gouv.fr/daj/conseil-acheteurs-fiches-techniques>

<sup>27</sup> <https://www.economie.gouv.fr/daj/ouverture-des-donnees-commande-publique>

<sup>28</sup> Law No. 78-753 of 17 July 1978 on various measures to improve relations between the administration and the public and various administrative, social and fiscal provisions is at the root of the logic of transparency by granting a right to the communication of documents relating to public procurement. The former article 133 of the 2006 Public Procurement Code, which provided that the buyer must publish the list of contracts concluded the previous year, was a guarantee of transparency regarding the use of public funds; source: DAJ, Fiche technique ("*technical information note*") "[La publication des données essentielles de la commande publique](#)", updated on 01 April 2019, 10 p. ; Méлина Elshoud, "L'accès aux données de la commande publique", Revue Générale du Droit, Etudes et réflexions 2018, n°3, p. 6





better *sourcing*<sup>29</sup> (perception of the economic fabric), better perception of contractual practices, detection of opportunities, restoration of public trust (mechanism for preventing corruption), better knowledge of past contracts, better access to public procurement.

### *Areas of disclosure of public data*

#### ***The principle of open data by default (general framework)***

After the adoption of the Law of 7 October 2016 for a Digital Republic (LRN), the principle became that **any document**<sup>30</sup> (files, reports, studies, studies, minutes, minutes, statistics, directives, instructions, circulars, source codes, etc. without restriction of medium: written, sound or visual recording, digital or computer form)<sup>31, 32</sup> **produced or received by the administration must now be open to access (“communicable”)**. Some clarifications<sup>33</sup> are provided by CADA case law and doctrine.

**However, the right of access does not mean the right of disclosure**; in other words, the obligation to communicate does not mean the obligation to publish documents online **except where the obligation to publish online is expressly provided for** (such is the case, for example, of essential data of public procurement, as we will see below).

#### ***Publication obligations under CRPA***

Thus, the Code for relations between the public and the administration (“*Code des relations entre le Public et Administration*”, CRPA) provides that any document open to access (“communicable”) (as defined above **may** be put online on request (article 311-9 CRPA) (**online disclosure on request**).

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<sup>29</sup> Dyens S., "Définition préalable du besoin et sourcing, la responsabilisation des acheteurs publics dans le nouveau droit des marchés publics", *AJ Collectivités Territoriales*, 2016, p. 422 et seq.

<sup>30</sup> Article 1- I - <sup>1st</sup> paragraph of the law of 7 October 2016 (LRN)

I.-Subject to Articles [L. 311-5](#) and [L. 311-6](#) of the Code of Relations between the Public and the Administration and without prejudice to Article L. 114-8 of the same Code, the administrations mentioned in the first paragraph of Article L. 300-2 of the said Code are required to communicate, in compliance with [Law No. 78-17 of 6 January 1978](#) on data processing, files and freedoms, the administrative documents they hold to the other administrations mentioned in the same first paragraph of Article L. 300-2 who request it for the performance of their public service tasks.

<sup>31</sup> Article L.300-2 of the Code of Relations between the Public and the Administration, see also CADA/CNIL Guide, *op. cit.*, p. 4

<sup>32</sup> To determine the criterion for the exercise of a public service mission see CADA/CNIL Guide, *op. cit.* pp. 4 - 5; it should be noted in any case that Article 1 of the Law for a Digital Republic has granted the right of access to administrations and legal persons governed by private law entrusted with a public service mission for the performance of their missions.

<sup>33</sup> CADA's clarification of the open to access (“communicable”) data:

- Only documents which have a sufficiently direct link with the exercise of public service missions, or which retrace the conditions under which the private body carries out its public service mission, are of an administrative nature, with the exception of documents relating solely to the internal functioning of that body (EC 25 July 2008, ECA, No 280163 and those on sports federations and the elections of its governing bodies);
- However, although not related to public service missions, documents relating to the management of the private domain of public persons are now subject to the regime for access to administrative documents;
- The document must exist on the date of the request or must be obtainable by routine automated processing (i. e. by using a computer program that is easy to use and available to the department holding the database) (EC, No 152393, Association de défense des animaux victimes d'ignominies ou de désaffectation, 22 May 1995);
- However, the creation of a document may be imposed on the administration when a publication obligation implies the creation of an *ad hoc* document. This is the case, for example, of the publication of rules defining the main algorithmic or environmental information processing operations or essential public procurement data (CADA/CNIL, Guide, *op. cit.*, p. 4).



However, CRPA contains some cases where online publication is mandatory (**online disclosure by default**). For administrations employing more than fifty people in full-time equivalents, **online disclosure is mandatory under Article L. 312-1-1-1 of the CRPA** for:

- 1° The documents they communicate in accordance with the procedures provided for by the CRPA, as well as their updated versions<sup>34</sup>;
- 2° The documents that appear in the directories of public information (RIP)<sup>35</sup> maintained by different administrations<sup>36</sup>;
- 3° The databases, updated on a regular basis, that they produce or receive and that are not otherwise publicly disseminated;
- 4° The data, updated on a regular basis, whose publication is of economic, social, health or environmental interest (ex. air quality data, geographical data, financial data (budgets, public procurement, subsidies, etc.).

This provision does not apply to local authorities with a population of less than 3,500.

**In addition, under Article L. 312-1-3 of the CRPA**, administrations employing at least 50 staff members must publish online the rules defining the main **algorithmic processing operations** used in the performance of their tasks, when these operations form the basis for individual decisions (e. g. assignment of pupils to a school or students to training, combating tax fraud, allocation of social housing, classification of air passengers at risk)<sup>37</sup>.

#### **Publication obligations by special laws**

Apart from the obligation to publish online the data of the public procurement provided for by the Public Procurement Code, many other laws provide for an obligation to publish according to the procedures defined in each case. For example<sup>38</sup>:

- The digital register of interest representatives<sup>39</sup>;
- Data collected or produced in the course of operating the public service and which are essential for its performance<sup>40</sup>;
- Detailed consumption and production data from energy metering systems<sup>41</sup>;

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<sup>34</sup> These are the documents that are disclosed

- or under the general provisions of CRPA,
- or by virtue of special provisions that expressly refer to the application of the RCAP, such as those of Article L. 124-1 of the Environmental Code.

While this obligation *strictly* concerns only documents that have been the subject of a request for disclosure since October 2018, it is intended to encourage administrations to anticipate such requests by spontaneously publishing open to access ("*communicable*") administrative documents; see CADA/CNIL, Guide, *op. cit.*, p. 5

<sup>35</sup> The RIP is an inventory of the main administrative documents that administrations produce or hold. For each of the documents, the RIP must indicate its exact title, its purpose, the date of its creation, the conditions for its reuse and, if applicable, the date and purpose of its updates (articles L. 322-6 and R. 322-7 of the RCAP)

<sup>36</sup> E.g. [DILA RIP](#), [Ministry of Agriculture RIP](#), [Ministry of Economy and Finance RIP](#).

<sup>37</sup> The publication of these rules implies that each administration concerned creates an *ad hoc* document, which is a derogation from the principle that only existing documents are publishable.

These are: to identify the main algorithms used for individual decision-making, i.e. the automated processing of personal data leading to such decisions; to mention the main rules applicable to each algorithm, i.e. the main steps and different modules of the algorithm in a language that everyone can understand; CADA/CNIL guide, *op. cit.*, p. 6

<sup>38</sup> These examples are taken from the CADA/CNIL Guide, *op.cit.*, p. 8

<sup>39</sup> Decree No. 2017-867 of 9 May 2017 on the digital directory of interest representatives

<sup>40</sup> Article 53-1 of Ordinance No. 2016-65 of 29 January 2016 on concession contracts

<sup>41</sup> Articles L. 111-73 and L. 111-77-1 of the Energy Code and Decree No. 2017-486 of 5 April 2017 on the processing and availability to the public of detailed metering data for electricity and natural gas transmission and distribution system operators.



- Data and coverage maps of electronic communication services<sup>42</sup>
- Data from the national health data system<sup>43</sup>;
- National data on maximum authorised speeds in the public road domain<sup>44</sup>;
- Information services data on parking areas for trucks and commercial vehicles, as well as data and procedures for the provision of traffic information related to road safety<sup>45</sup>;
- Geographical location and technical characteristics of the stations and electrical charging points<sup>46</sup>.

#### - ***Compulsory disclosure in the field of public procurement open data***

As noted, in the context of public procurement, the obligation to disclose is older than the open data movement.

It was and continues to be mandatory to publish:

- **tender notices or contract notices** identifying the public purchaser's need (the subject of the contract, legal, economic, financial and technical information, the procedure implemented, the award criteria and the time limits for the validity of tenders);
- **award notices** to find out the final choice made by the public purchaser or the awarding authority (number of bids received, award criteria used, type of procedure, contract holder and address, amount, significant dates in the award of the contract and possibilities for appeal, in particular for an ousted third party)<sup>47</sup>;
- **the presentation reports on contracts awarded with a value equal to or greater than the European thresholds** published in the Official Journal of the French Republic (JORF) and intended for the supervisory authorities and the European Commission, as well as
- **the inventory sheets of contracts worth more than 90,000€ excluding VAT for the public accountant and the Economic Observatory of Public Procurement.**

Articles R. 2196-1 and R. 3131-1 of the Public Procurement Code provide that the **essential data** of all public contracts (including framework agreements)<sup>48</sup> meeting a requirement whose value is **equal to or greater than 25,000 € excluding VAT** and of all concession contracts must be published on buyer profiles. The decree of 22 March 2019 is the one that provides for the list of these essential data and the publication requirements. As mentioned, Annex 15 of the Public Procurement Code introduced by the decree of 22 March 2019 is the cornerstone of Open Data on Public Procurement. It lays down the **formats, standards and nomenclatures** in which these data must be published and the **procedures and requirements for their publication.**

<sup>42</sup> Article L. 36-7 of the French Post and Electronic Communications Code, based on the law of 7 October 2016; ARCEP decision n° 2016- 1678 of 6 December 2016 on the content and methods of making information on the coverage of mobile services available to the public and methods of verifying the reliability of this information

<sup>43</sup> Article 193 of Act No. 2016-41 of 26 January 2016 on the modernization of our health system and Decree No. 2016-1871 of 26 December 2016 on the processing of personal data known as the "national health data system".

<sup>44</sup> Article L. 119-1-1-1 of the Highway Code, based on Ordinance No. 2016-1018 of 27 July 2016 on the communication of road traffic data of local authorities and their groupings

<sup>45</sup> Article 3 of Decree No. 2015-474 of 27 April 2015 on the provision of information services concerning parking areas for trucks and commercial vehicles and on data and procedures for the provision of traffic information related to road safety

<sup>46</sup> Decree No. 2017-26 of 12 January 2017 on charging infrastructures for electric vehicles and various measures to implement Directive 2014/94 of 22 October 2014 on the deployment of infrastructure for alternative fuels.

<sup>47</sup> Until 2016, the list of public contracts and concessions signed the previous year that each public purchaser was required to make public in the first quarter of the new year,

<sup>48</sup> It should be noted here, without going into detail, that the scope of the contracts concerned also includes framework agreements whose estimated value of the requirement is equal to or greater than 25,000€ excluding tax. This interpretation is given by the DAJ in the technical information note, *op. cit.*, 2019 p. 2; However, it is necessary to take into account here the contradiction that exists with CADA's doctrine as to the communicability of documents with regard to "framework agreements"; see the [sheet put online](#) by CADA on 18 July 2018



● ***The "essential data":***

The ***minimum data*** (essential data, "données essentielles") relating to public contracts subject to the **obligation of publication** are specified by article 1 of the decree of 22 March 2019 (**essential data on public contracts**):

- 1° The unique identification number of the public contract;
- 2° The date of notification of the public contract;
- 3° The date of publication of the essential data of the initial public contract;
- 4° The name of the buyer or agent in the case of a grouping;
- 5° The SIRET number of the buyer or the SIRET number of the agent in the case of a grouping;
- 6° The nature of the public contract corresponding to one of the following indications: contract, partnership contract, framework agreement, subsequent contract;
- 7° The subject of the public contract;
- 8° The main code of the Common Procurement Vocabulary (CPV) provided for in Regulation (EC) No 213/2008 of 28 November 2007 referred to above;
- 9° The award procedure used corresponding to one of the following statements: adapted procedure, open invitation to tender, restricted invitation to tender, procedure with negotiation, competitive dialogue, public contracts awarded without prior advertising or competition;
- 10° The name of the main place of execution;
- 11° The identifier of the main place of execution, in the form of a postal code or an INSEE code;
- 12° The duration of the initial public contract in number of months;
- 13° The fixed or estimated maximum amount excluding VAT in euros;
- 14° The form of the public market price corresponding to one of the following statements: firm, firm and updatable, revisable;
- 15° The name of the holder or holders of the public contract;
- 16° The registration number(s) of the holder(s) in the register of companies and their establishments, provided for in Article R. 123-220 of the French Commercial Code, failing which the intra-Community VAT number where the registered office is domiciled in a Member State of the European Union other than France or the number in force in the country where the registered office is domiciled outside the European Union;

In addition, any **amendment of** public contracts must also be published (except for amendments resulting from the implementation of price variation clauses, which are exempt from publication, Article 1, article 1 of the decree of 22 March 2019 last paragraph). This is considered to be a real step forward in the legal framework for the opening of public procurement data<sup>49</sup>.

Thus must also be published (**essential data for amending public contracts**):

- 1° The date of publication of the data relating to the amendment made to the initial public contract;
- 2° The purpose of the amendment to the public contract;
- 3° The modified duration of the public contract;
- 4° The modified pre-tax amount in euros of the public contract;
- (5) The name of the new holder, in the event of a change of holder;
- 6° The identification number of the new holder, in the event of a change of holder;
- (7) the date of notification by the purchaser of the amendment to the public contract.

Article 2 of the Decree of 22 March 2019 provides for similar data for concession contracts (**essential data for concession contracts**) and the requirement to publish data on the implementation of the concession contract.

<sup>49</sup> In this regard, Mélina Elshoud, "L'accès aux données de la commande publique", Revue Générale du Droit, Etudes et réflexions 2018, n°3, p. 15



- 1° The unique identification number assigned to the concession contract;
- 2° The start date of execution of the concession contract;
- 3° The date of publication of the essential data of the concession contract;
- 4° The name of the licensing authority;
- 5° The SIRET number of the licensing authority;
- 6° The nature of the concession contract corresponding to one of the following statements: works concession, service concession, public service concession or public service delegation;
- 7° The purpose of the concession contract;
- 8° The procurement procedure used corresponding to one of the following statements: open negotiated procedure, open non-negotiated procedure, restricted negotiated procedure, restricted non-negotiated procedure;
- 9° The name of the main place of execution;
- 10° The identifier of the main place of execution, in the form of a postal code or an INSEE code;
- 11° The duration of the concession contract in number of months;
- 12° The total value excluding tax assigned in euros;
- 13° The amount in euros of subsidies or any other financial advantage granted by third parties for the operation of the concession;
- 14° The name of the concessionaire;
- 15° The registration number of the concessionaire in the register of companies and their establishments, provided for in Article R. 123-220 of the French Commercial Code, failing which the intra-Community VAT number where the registered office is domiciled in a Member State of the European Union other than France or the number in force in the country where the registered office is domiciled outside the European Union

- **The obligation to publish above a threshold and the incentive to publish independently of the threshold**

The value equal to or greater than 25,000€ for all public contracts and framework agreements is the threshold above which the publication of the essential data of the contract and framework agreement is mandatory (Article R. 2196-1 and R. 3131-1 of the Public Procurement Code).

However, since the “open data by default” principle (derived from the LRN - also applied to public procurement data), it is specified by the DAJ in April 2019 that the opening of public procurement data can be applied regardless of threshold:

"One of the main principles of public procurement is transparency. Therefore, **there is nothing to prevent the buyer from publishing the essential data of all his purchases, regardless of the amount or from publishing other data** [Precautions must be taken not to publish data the disclosure of which would be contrary to public order (“*ordre public*”) or to disclose confidential information]. **So-called "extended" data standards, which are not mandatory, will soon be published in order to** enable buyers who wish to publish more data than the minimum data imposed by the texts in force, the **aim being to anticipate a broader obligation to open up data in the coming years** and to standardise the publication of these data in a single format as of now, in order to converge the essential data with those of the census. »<sup>50</sup>

An information note was also<sup>51</sup> published in April 2019 by the DAJ to clarify the rules applied to public contracts with a value of less than 25,000€ in order to avoid the risk of misinterpretation of this threshold. Both the traceability of the purchase and the rules on access to data and competition are

<sup>50</sup> DAJ, Fiche Technique "[La publication des données essentielles de la commande publique](#)", *op.cit.*, 01/04/2019, p. 2

<sup>51</sup> [https://www.economie.gouv.fr/files/files/directions\\_services/daj/markets\\_publics/public\\_advisory\\_buyers/technical\\_sheets/implementation-procedure/buys-minus-25-000-euros-2019.pdf](https://www.economie.gouv.fr/files/files/directions_services/daj/markets_publics/public_advisory_buyers/technical_sheets/implementation-procedure/buys-minus-25-000-euros-2019.pdf)



applicable (relevant offer, proper use of public funds, not to contact "systematically" the same operator).

**Seuils de publicité des marchés de l'État et de ses établissements (Autorités centrales) - Montants hors taxe**

	Publicité non obligatoire	Publicité libre ou adaptée	Publicité au BOAMP ou dans un JAL	Publicité au BOAMP et au JOUE
Fournitures et services	en dessous de 25 000 €	de 25 000 € et jusqu'à 89 999,99 €	de 90 000 € à 143 999,99 €	à partir de 144 000 €
Travaux	en dessous de 25 000 €	de 25 000 € et jusqu'à 89 999,99 €	de 90 000 € à 5 547 999,99 €	à partir de 5 548 000 €
	Publicité non obligatoire	Publicité libre ou adaptée		Publicité au JOUE
<u>Services sociaux et spécifiques</u> <sup>52</sup>	en dessous de 25 000 €	de 25 000 € à 749 999,99 €		à partir de 750 000 €

**Seuils de publicité des marchés des collectivités territoriales, de leurs établissements et de leurs groupements ainsi que des autres acheteurs (sauf l'État) - Montants hors taxe**

	Publicité non obligatoire	Publicité libre ou adaptée	Publicité au BOAMP ou dans un JAL	Publicité au BOAMP et au JOUE
Fournitures et services	en dessous de 25 000 €	de 25 000 € et jusqu'à 89 999,99 €	de 90 000 € à 220 999,99 €	à partir de 221 000 €
Travaux	en dessous de 25 000 €	de 25 000 € et jusqu'à 89 999,99 €	de 90 000 € à 5 547 999,99 €	à partir de 5 548 000 €
	Publicité non obligatoire	Publicité libre ou adaptée		Publicité au JOUE
<u>Services sociaux et spécifiques</u> <sup>52</sup>	en dessous de 25 000 €	de 25 000 € à 749 999,99 €		à partir de 750 000 €

[Source of](#) the tables: BOAMP

- **The obligation to publish on the buyer profile**<sup>52</sup>

The Public Procurement Code requires that publication has to be made "on the buyer's profile" ("*profil d'acheteur*") (article L. 2196-2 and L. 3131-1 Public Procurement Code).

Under Articles R.2132-3, R.2332-5 and R.3122-10 of the same Code, the buyer profile is the dematerialisation platform enabling buyers/granting authorities in particular to make the consultation documents available to economic operators by electronic means and to receive electronically the documents sent by candidates and tenderers.

To find out the functional and technical requirements that buyer profiles must meet, the DAJ has produced a technical information note (updated in April 2019)<sup>53</sup>.

<sup>52</sup> This paragraph does not mention the publication obligations in the Official Bulletin of Public Procurement Announcements (BOAMP), newspapers authorised to receive legal notices (JAL) or in the Official Journal of the European Union (OJEU).

<sup>53</sup> DAJ, (Fiche Technique sur le Profil d'acheteur) [Technical information note "Purchaser Profile"](#), 10p.





The site of a local authority can only be qualified as a buyer profile if it offers access to a certain number of mandatory functionalities (provided for in Appendix 7 of the Public Procurement Code)<sup>54</sup>.

### **Publication requirements and data standardization. Personal data protection**

**Open data** is subject to rules on data content. These rules must be considered from a negative point of view; it will thus be set out what should not be published (**restrictions**) (A) and then from a positive point of view which means the **requirements** for the reuse of public data (B). Finally the requirements for the **standardisation of public procurement data** will be exposed (C).

#### **A. RESTRICTIONS DUE TO THE CONTENT OF DATA**

##### **- Open data restrictions (general framework)**

Open data is allowed on condition that :

- documents containing personal data are subject to **anonymisation** and compliance with the obligations arising from the GDPR;
- information relating to secrets is subject to concealment (“occultation”);
- the copyright is not infringed.

##### ● **Publication requirements resulting from the protection of personal data**

**Anonymisation in principle:** Pursuant to Article 312-1-2 para. 2 CRPA<sup>55</sup>, Articles 4 and 7 GDPR<sup>56</sup> and CADA Opinion No. 20180650, any document containing personal data must have been previously processed in order to make it impossible to identify individuals (anonymisation).

Not submitted to the disclosure obligation: date of birth and age, personal details, in particular postal address, e-mail address and telephone number, property and financial situation, in particular real estate assets, income received, including replacement aid or income, taxes paid, bank domiciliation and identification of bank and postal accounts, call into question private life, the status of disabled worker, initial training, working hours, political sympathies and membership of a political party and religious beliefs<sup>57</sup>.

However, it is important to note that not every nominative document infringes on the right to respect of private life. Data of which it is considered that the public must be aware, either as part of the organisation of the public service or in order to be able to fully exercise its right of appeal, are therefore submitted to the disclosure obligation. This applies, for example, to an order appointing a municipal agent, to information relating to the name and address of the beneficiary of an urban planning permit

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<sup>54</sup> Annex 7 of the Public Procurement Code: [Order of 22 March 2019 on the functionalities and minimum requirements of buyer profiles](#) introduced by the [Order of 22 March 2019 on the preliminary annex to the Public Procurement Code](#)

<sup>55</sup> Article 312-1-2 para. 2 CRPA

Unless otherwise provided by law or if the persons concerned have given their consent, where the documents and data referred to in Articles L. 312-1 or L. 312-1-1 include personal data, they may not be made public until they have been processed in such a way as to make it impossible to identify such persons. A list of the categories of documents that may be made public without having undergone the above-mentioned processing operation is introduced by decree adopted after a reasoned opinion and published by the Data Protection Authority (“Commission nationale de l’informatique et des libertés”, CNIL).

<sup>56</sup> Article 4 -1 GDPR " "personal data" means any information relating to an identified or identifiable natural person (hereinafter referred to as "data subject"); an "identifiable natural person" is defined as a natural person who can be identified, directly or indirectly, in particular by reference to an identifier, such as a name, identification number, location data, online identifier, or to one or more elements specific to his physical, physiological, genetic, psychological, economic, cultural or social identity;

Article 7§1 GDPR conditions applicable to consent" 1. in cases where the processing is based on consent, the controller is able to demonstrate that the data subject has given his or her consent to the processing of personal data relating to him or her. (...) ».

<sup>57</sup> CADA/CNIL Guide, *op. cit.* , p. 13





or to information freely recorded on public inquiry registers by persons who have made observations on the project under investigation<sup>58</sup>.

Moreover, even if "as a matter of principle, the online disclosure of personal data is prohibited"<sup>59</sup>, there are **three hypotheses in which this dissemination can take place without anonymisation**:

- If a "contrary legislative provision" authorizes such publication without anonymization;
- If the persons concerned have given their free, specific, informed and unequivocal consent (Article 4 GDPR);
- If the documents to be published fall within the categories of *administrative documents* that may be made public without prior anonymisation listed in Article D. 312-1-3 CRPA<sup>60</sup>, <sup>61</sup>. Nevertheless, the "CADA and CNIL Guide on Open Data" states that :  
"Indexing of identifying data by external search engines shall be prohibited. Indeed, any consultation of information disseminated in open data must result from a voluntary approach by Internet users from platforms dedicated to open data. Therefore, **administrations publishing non-anonymised documents will have to put in place measures to prevent external search engines from indexing published identifying data**. These measures may include, for example, the use of indexing rules for properly defined search engines (robots.txt) or mechanisms to ensure that the sender of a request for a document is an Internet user and not a computer program (captcha device). "» <sup>62</sup>

**Publication requirements resulting of the GDPR in the event of non-anonymisation**: Since the online dissemination of documents containing personal data corresponds to "processing" within the meaning of the GDPR (Article 4)<sup>63</sup>, the administrations responsible for disclosure are qualified as "controllers" and must comply with the applicable rules on the subject resulting from the GDPR and allow the effective exercise of individuals' rights:

More specifically, these requirements include:

- **Information to data subjects**: it must be provided both at the time of initial data collection (Article 13(3) GDPR, direct collection; Article 14(4) GDPR, indirect collection) and on the online space where the documents are distributed. This information shall be concise, transparent, understandable, easily accessible and provided in clear and simple terms in accordance with Article 12 of the GDPR<sup>64</sup>;
- **Right of objection**: according to the CADA/CNIL guide on open data "persons whose data will be disseminated in *open data* will be able to exercise their right to objection pursuant to Article 21 of the

<sup>58</sup> CADA, [Council 20180650 - Meeting of 13/09/2018, Soisy-sous-Montmorency Town Hall](#),

<sup>59</sup> CADA/CNIL Guide, *op. cit.*, p. 13

<sup>60</sup> This provision was introduced by [Decree No. 2018-1117 of 10 December 2018 on the categories of administrative documents that may be made public without being subject to a process of anonymization](#)

<sup>61</sup> "These are documents necessary for informing the public in different areas of public action or supervised by the public authorities. CADA and CNIL agree that, since dissemination without anonymization is only a possibility for administrations, the desirability of such dissemination should be assessed in the light of the public interest in knowing personal data and the related risks of invasion of privacy. This is also the case when publication is provided for in the texts but does not make the publication of personal data mandatory. Anonymisation may thus remain relevant for certain data that are not useful for informing the public in order to avoid excessive exposure of people's private lives. For example, partial anonymisation of administrative organisation charts and directories should be considered in the case of data relating to the identity of certain staff members (in particular staff members with no immediate link with the public or those with no particular responsibilities). "CADA/CNIL Guide, *op. cit.*, p. 14

<sup>62</sup> CADA/CNIL Guide, *op. cit.*, p. 14

<sup>63</sup> Article 4 GDPR "processing": "any operation or set of operations carried out or not using automated processes and applied to personal data or sets of data, such as collection, recording, organisation, structuring, storage, adaptation or modification, retrieval, consultation, use, communication by transmission, dissemination or any other form of making available, matching or interconnection, limitation, erasure or destruction".

<sup>64</sup> On RGPD Compliance: how to inform people and ensure transparency see the CNIL website dedicated to this purpose: <https://www.cnil.fr/fr/conformite-rgpd-information-des-personnes-et-transparence>



GDPR for reasons relating to their particular situation. The administration will retain the possibility of refusing to grant any request for deletion on the basis of a legitimate and overriding reason that prevails over the interests and rights and freedoms of the person concerned<sup>65</sup>. In addition, databases placed in *open data* could be marked with "tags" so that each reuser can precisely identify the documents for which objection rights to certain reuses have been registered by the controller of the initial processing operation<sup>66</sup>.

- **Accuracy of personal data:** Among the various principles of article 5 of the GDPR, the CADA/CNIL Guide on Open Data identify data accuracy as an essential requirement in the context of open data. It is thus specified that "There are different technical modalities for regularly updating the data. For example, *application programming interfaces* (or APIs) make data available in an easily usable electronic format and also facilitate **subsequent data updates: any updates to source data are automatically taken into account and reflected in the data made available**. Internet users, whether re-users or simple readers, will thus use the interface to automatically retrieve or consult updated data;"<sup>67</sup>.
- **Requirements resulting from secrets (concealment requirement)**  
**Under Articles L. 312-1-2 para. 1, L. 311-5-2° and L. 311-6 CRPA** must be **concealed** before publication and, unless otherwise provided by law or regulation,<sup>68</sup> the references to administrative documents whose consultation or communication would prejudice:
  - the secrecy of the deliberations of the Government and the responsible authorities under the executive branch;
  - to the secrecy of national defence;
  - the conduct of France's foreign policy;
  - State security, public safety, personal security or the security of administrative information systems;
  - to money and public credit;
  - the conduct of proceedings before the courts or operations; preliminary to such proceedings, unless authorised by the competent authority;
  - the investigation and prevention, by the competent services, of offences of all kinds;
  - or subject to Article L. 124-4 of the Environmental Code, to other secrets protected by law (**L. 311-5-2° CRPA**).

Also the following mentions have to be kept hidden:

- The communication of information which would infringe the protection of privacy, medical secrecy and business secrecy, which includes the secrecy of processes, economic and financial information and commercial or industrial strategies ; these points are assessed by taking into account, where appropriate, the fact that the public service mission of the administration mentioned in the first paragraph of Article L. 300-2 is subject to competition rules;
- Mentions making an assessment or value judgment about a natural person, specifically designated or easily identifiable;
- Mentions indicating the behaviour of a person, if disclosure of this behaviour could be prejudicial to him or her (**L. 311-6 CRPA**).

- **Copyright requirements**

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<sup>65</sup> For example, in the context of the publication of its online organisation chart, an administration may refuse to grant an opposition request made by an official occupying functions requiring public disclosure of his or her identity, CADA/CNIL Guide, p. 16

<sup>66</sup> CADA/CNIL Guide, *op. cit.* , p. 16

<sup>67</sup> CADA/CNIL Guide, *op. cit.* , p. 16

<sup>68</sup> The words "unless otherwise provided by law or regulation" include, for example

- The provisions of the General Code of Local Authorities (CGCT) allow any natural or legal person to request access to the minutes, budgets, accounts and orders of local authorities (Articles L. 2121-26, L. 3121-17, L. 4132-16, L. 5211-46, L. 5421- 5, L. 5621-9 and L. 5721-6 of the CGCT)
- Provisions relating to environmental information (Article L. 124-1 of the Environmental Code)



According to Article L. 311-4 CRPA, "Administrative documents shall be communicated or published subject to literary and artistic property rights". As a result, the administration must seek the authorization of a third party holding intellectual property rights on a document in its possession before disclosing it. It is therefore advisable to determine contractually the extent of the rights assigned between the administration and a third party to whom an order for a work of the mind has been placed<sup>69</sup>.

- **Specific restrictions in the field of public procurement open data**

Articles L. 2196-2 of the Public Procurement Code [Provision on essential data by purchasers - public procurement]<sup>70</sup> and article L3131-1 of the Public Procurement Code [Provision on essential data by the licensing authority - concession contracts]<sup>71</sup> provide for restrictions on confidentiality and public order applicable to public procurement and concession contracts respectively.

Thus, **the restrictions** justified by the secrecy, personal data protection and copyright requirements **mentioned above are also applicable to the** disclosure of public procurement data.

The DAJ in the technical information note on essential public procurement data (published in April 2019) summarises these requirements - resulting from the protection of personal data and the CRPA, **without mentioning concealment**. The DAJ insists in particular on the protection of the **nation's scientific and technological potential as well as on the** particular attention paid to the opening of public procurement, so as not to undermine the business secrecy and explains:

"data presenting risks to the protection of the **nation's scientific and technological potential** shall not be published. Scientific and technological potential consists of all the tangible and intangible assets specific to fundamental and applied scientific activity and technological development. The essential elements of potential constitute **fundamental interests of the nation as** defined in Article 410-1 of the Criminal Code. In addition, published data must not affect business secrecy, which includes process secrecy (a **company's own know-how**), economic and financial information secrecy (**company's**

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<sup>69</sup> CADA/CNIL Guide, *op. cit.* p. 13

<sup>70</sup> Article L2196-2 Public Procurement Code [Availability of essential data by purchasers - public contracts] Under conditions and subject to the exceptions provided for by regulation, the purchaser shall make essential market data accessible in an open and freely reusable format, except for those whose disclosure would be contrary to the provisions of Article L. 2132-1 or contrary to public order.

See Article L. 2132-1 Public Procurement Code (confidentiality)

The buyer may not disclose confidential information of which it has become aware during the procurement procedure, such as information the disclosure of which would violate business confidentiality, or information the disclosure of which could harm fair competition between economic operators, such as information during consultation of the total amount or detailed price of tenders. However, the buyer may ask economic operators to consent to the disclosure of certain confidential information they have provided, specifically designated. The buyer may impose requirements on economic operators to protect the confidentiality of the information it communicates in the context of the procurement procedure.]

<sup>71</sup> Article L3131-1 Public Procurement Code [Provision of essential data by the concessional authority - concession contracts]

Under conditions laid down by regulation, the concessional authority shall make the essential data of the concession contract accessible, in an open and freely reusable format, subject to the provisions of Article L. 3122-3 and with the exception of information the disclosure of which would be contrary to public order.

See Article 3122-3 of the Public Procurement Code (confidentiality)

The authority may not disclose confidential information held by it under a concession contract, such as information the disclosure of which would violate business confidentiality, or information the disclosure of which could harm fair competition between economic operators, such as information in the course of consulting the overall or detailed value of tenders. However, the authority may require economic operators to consent to the disclosure of certain confidential information they have provided, specifically designated. The authority may impose requirements on economic operators to protect the confidentiality of the information it communicates in the context of the concession contract award procedure.]



**economic situation**, financial health and any information revealing its level of activity) and **business strategy secrecy** (the company's strategic decisions and its competitive environment). "»<sup>72</sup>

## B. REQUIREMENTS FOR THE LEGAL REUSE OF OPEN DATA

The online access and disclosure ("*caractère communicable et publiable en ligne*") of data held by administrations is a prerequisite for the opening of data. Nevertheless, their **reuse** is a condition for achieving the three objectives of the open data movement (transparency, better governance, economic development).

Even if the open data movement aims at the free reuse of open data, the latter presupposes that restrictions do not apply. Thus, Articles L. 321-1 to L. 321-3 CRPA provide for **the scope of the right to reuse**. It is composed of rules relating to reuse free of charge and the licensing issue, as well as the prohibition of data distortion, the copyright rules (specific to reuse) and the rules relating to the protection of personal data (specific to reuse).

### - **Reuse of open data (general framework)**

#### ● **Reuse free of charge - the licensing issue**

Article L 324-1 CRPA sets up the principle of **free** reuse of public information. But it also introduces its exception.

The exception consists of two elements:

- The possibility for the administration to require the payment of a **fee for reuse** (according to provisions L 324-1 et seq. of the CRPA);
- The provision of a **reuse licence** when reuse is subject to the payment of a fee (Article L. 232-1 et seq. of the CRPA).

For their public data made available free of charge, there is no obligation for administrations to set a licence, but they are strongly encouraged to do so for educational purposes, in order to make it easier for reusers to understand their rights and obligations<sup>73</sup>. However, in order to **avoid the proliferation of licences** and to ensure the smoothest flow of public data and to allow their cross-referencing, administrations have a limited choice of licences that can be used for the free re-use of public information, whether it is data or software source code. They appear on a list set up by decree and accessible here: <https://www.data.gouv.fr/fr/licences>.

When no existing licence meets the particular needs of an administration and the latter would like to use a specific licence, it must first request its approval by the State after having sent a reasoned request to the Interministerial Directorate of State Information Systems and Communication (DINSIC)<sup>74, 75</sup>.

#### ● **Prohibition of data distortion**

According to Article L. 322-1 CRPA, unless expressly agreed by the holding administration, the reuse of public information is subject to the condition that it is not **altered**, that **its meaning is not distorted** and that **its sources** and the **date of its last update are mentioned**<sup>76</sup>.

<sup>72</sup> DAJ, "[La publication des données essentielles de la commande publique](#)", *op.cit.*, p. 9

<sup>73</sup> CADA/CNIL Guide, *op. cit.*, p. 18

<sup>74</sup> The Interministerial Directorate for Digital and the State Information and Communication System (DINSIC) supports ministries in their digital transformation, advises the government and develops shared services and resources such as the inter-ministerial network of the State, [FranceConnect Identity](#), [data.gouv.fr](#) or [api.gouv.fr](#). DINSIC is an office of the Prime Minister, placed under the authority of the Minister of Action and Public Accounts, and made available to the Minister of Economy and Finance and the Secretary of State for Digital Affairs. The founding texts: [decree of 21 September 2015](#) and [decree of 20 November 2017](#); source: <https://www.numerique.gouv.fr/dinsic/>

<sup>75</sup> CADA/CNIL Guide, *op. cit.*, p. 18

<sup>76</sup> See also CADA/CNIL Guide, p. 20



- **Copyright requirements (specific to reuse)**

According to Articles L 321-1 to L. 321-3 CRPA, data referred to above (**Article L321-1 CRPA**) may be freely reused provided that the restrictions referred to above do not apply (concealment in the event of application of secrets, anonymisation in the event of a breach of privacy or respect for the rights of the persons concerned where there is no need to make the documents anonymous) (**Article L321-2-a CRPA**).

However, copyright can be an obstacle to the reuse of data (much more than to their disclosure seen above). Thus, as soon as

- third parties (**article L321-2-b CRPA**)<sup>77</sup>
- or a public private person operating a public industrial and commercial service subject to competition hold intellectual property rights, the information cannot be considered as public information and therefore cannot be reused.

It is also specified that where copyright applies, the reuse of data may in principle not be subject to an **exclusive right** except in certain cases provided for in Articles L. 325-1 to L. 325-8 CRPA and specified in the CADA/CNIL guide<sup>78</sup>.

- **Compliance with personal data protection rules (specific to reuse)**

We have seen beforehand the requirements of the GDPR in terms of online publication. However, the issue of reusing open data is another. It is known that the cardinal principle of protection of personal data was, before the GDPR, that of their processing for a specific purpose. However, the GDPR has changed this principle. The reuse of open data held by administrations is now **possible for purposes other than those of the public service mission for which they were produced or received**, provided that the provisions of the Data Protection Act (Act No. 78-17 of 6 January 1978), as amended following the GPDR (Article L. 322-2 CRPA), are respected.

They are set out by the CNIL in the guide on open data co-written with CADA<sup>79</sup>. These are : the requirements for the **lawfulness of reuse**, the pursuit of a **new specific purpose** and the **adequacy, relevance and proportionality** of the data, the **updating** of the data, the **transparency** of the processing operation in the sense of making the references in Article 14 of the GDPR appear, the respect for **the rights of individuals** (objection, access, rectification, portability), compliance with the principle of data **retention** restrictions and, finally, the guarantee of **data security**.

It is also important to note that according to Article R.322-3 CRPA "Where **reuse** is only possible after **anonymisation** of personal data, the holding authority shall proceed with it **provided that this operation does not involve disproportionate efforts**. »

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<sup>77</sup> CADA considers that public officials can be considered as "third parties" holding intellectual property rights and that, consequently, the information contained in documents on which public officials hold intellectual property rights, CADA Council No. 20092706 of 5 November 2009, CADA/CNIL Guide, p. 19

<sup>78</sup> "The reuse of public information may not, as a matter of principle, be the subject of an exclusive right granted to a third party. Where such a right is necessary for the exercise of a public service mission, the exclusive right may be granted in the following three cases:

- classic exclusivity right: an exclusivity agreement is concluded between the reuser and the administration holding the data for a maximum period of 10 years with a periodic review at least every three years,
- exclusive right granted for the purpose of digitising cultural resources: an exclusive agreement has been concluded for a maximum period of 15 years. With a review in the eleventh year and then, if necessary, in the thirteenth year;
- exclusive right granted between public persons in the context of their public service missions on the basis of legislative or regulatory provisions, in compliance with competition law: these agreements must be reviewed during the eleventh year and then, if necessary, every seven years; "CADA/CNIL Guide, p. 20

<sup>79</sup> CADA/CNIL Guide, *op.cit*, p. 20



The DAJ has also produced an information note on the impact of the GDPR on public procurement law<sup>80</sup>.

- **Reuse in the field of public procurement open data**

According to the DAJ, in the case of essential data for public procurement, "reuse licences, the content of which is determined by the buyer, constitute the contract by which the holder of the intellectual property rights grants a right of access and use to the data sets covered by the contract. They therefore make it possible to regulate the rights and obligations of re-users and to ensure that they will respect the authenticity and integrity of the published information. The choice of licenses is one of the major issues in the implementation of a data openness approach. This choice requires planning the uses of the data sets made available in order to protect the community, citizens and the "reuser" while preserving a certain freedom in the use of these data. They therefore serve to guarantee the use that can be made of the data, particularly during aggregations or any other processing<sup>81</sup>.

Thus, the previous rules relating to the reuse of data are applicable in the context of open data public procurement.

Article 10 of Annex 15 on essential data (provided for by the Order of 22 March 2019) provides that **the public purchaser or the licensing authority shall make the essential data available under a reuse licence which the public purchaser shall determine in accordance with L323-2 and following of the CRPA**. The buyer must therefore determine the licence he wishes to see used for his essential data in the list of licences provided for in Article D. 323-2-1 CRPA. The buyer may submit the reuse of essential data free of charge to two separate licenses:

1. the open license to reuse public information or
2. the Open Database license<sup>82</sup>.

It is recommended that each buyer determine a licence and publish the essential data of all its public contracts or concession contracts under the same licence.

In order to allow the maximum exploitation of the potential of open data, data standardisation requirements must be respected and are particularly specific in the context of open data public procurement as discussed below.

C. **STANDARDISATION REQUIREMENTS ALLOWING THE USE OF OPEN DATA**

- **Standardisation of open data (general framework)**

As far as open data in general is concerned, the requirement for data standardisation is central. It allows for the harmonisation, comparison, aggregation and easy processing of data.

It is reflected in the **principle of interoperability**. Article L 300-4 CRPA provides that "Any provision made in electronic form pursuant to this book shall be made in an open standard, easily reusable and usable by an automated processing system. ».

<sup>80</sup>[https://www.economie.gouv.fr/files/files/directions\\_services/daj/markets\\_publics/purchasers\\_advisors/technical\\_sheets/preparation-procedure/impact\\_RGPD\\_right\\_Public\\_order.pdf](https://www.economie.gouv.fr/files/files/directions_services/daj/markets_publics/purchasers_advisors/technical_sheets/preparation-procedure/impact_RGPD_right_Public_order.pdf)

<sup>81</sup> DAJ, "[La publication des données essentielles de la commande publique](#)", *op.cit.*, p. 9

<sup>82</sup> <https://www.data.gouv.fr/fr/licences> ; In order to avoid the proliferation of licences, the [law for a Digital Republic](#) has provided for the creation of a list, fixed by decree, of licences that may be used by administrations for the free re-use of their public information, whether it is data or source code of software ([Article D.323-2-1 of the Code of Relations between the Public and the Administration \(CRPA\)](#)). This page refers to all licenses that can be used by administrations for this purpose. It may be updated as versions of these texts evolve, and as the decree evolves. The first part of this page lists the licenses applicable to public information (data, documents, etc.) and source codes that can be used by the administration. The second part of this page lists the special licences approved with the applicable scope of approval (specific public information, specific administration, or other) under [Article D. 323-2-2-2 of CRPA](#).





In addition, Article 11 of Order No. 2005-1516 of 8 December 2005<sup>83</sup> provides that "A **general interoperability reference framework shall** lay down the technical rules for ensuring the interoperability of information systems. In particular, it determines the data directories, norms and standards that must be used by administrative authorities. The conditions for the preparation, approval, modification and publication of these standards are set by decree. The Interministerial Directorate of Digital and the State Information and Communication System has published a General Interoperability Reference Framework (RGI)<sup>84</sup>. The Open Data Protocol is proposed.

#### - ***Standardization of essential data in the field of public procurement***

As mentioned above, **Annex 15** of the Public Procurement Code introduced by the **Order ("arrêté") of 22 March 2019** sets out the **formats, standards and nomenclatures** in which these data must be published and the **procedures for their publication**.

Thus, apart from the list of essential public procurement data mentioned above, the annexes to the decree of 22 March 2019 contain the standards ("référentiels") for **public contracts data** (annex 1) and those for **concession contracts data** (annex 2).

These standards are provided in the **appendix to this report** (annexe A "Standards for essential public procurement open data").

In addition, the models constituting the description of the data organisation and the schemes for checking the validity and conformity of the data structure are available at the following address:

<https://www.data.gouv.fr/fr/datasets/referentiel-de-donnees-marches-publics/>

The site [www.data.gouv.fr](http://www.data.gouv.fr) also contains consolidated files of the essential data of public procurement<sup>85</sup>.

Finally, **Annex 7** of the Public Procurement Code<sup>86</sup> sets out the technical, **accessibility and safety** requirements that buyer profiles must meet by referring to Order No. 2005-1516 of 8 December 2005 referred to above.

#### ***Data accessibility***

The principle of open data by default, as we have seen, is the one according to which any administrative document that falls into the category of accessible documents ("*documents communicables*") (see above) *can* and *must* most often be published online (e.g. essential public procurement data) following the LRN.

Insofar as contracts and related documents are administrative documents, which lose their preparatory character once the contract has been signed, they become accessible ("*communicable*")<sup>87</sup> and are subject to the right of access introduced by the law of 17 July 1978<sup>88</sup>.

When data relating to public procurement are not published even though it should have been disclosed, the right of access may be exercised before the CADA, after having verified the compliance with industrial and commercial confidentiality (art. 311-6 CRPA) (which covers process confidentiality,

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<sup>83</sup> [Ordinance No. 2005-1516 of 8 December 2005 on electronic exchanges between users and administrative authorities and between administrative authorities.](#)

<sup>84</sup> [General Interoperability Standard](#), version 2.0 December 2015

<sup>85</sup> <https://www.data.gouv.fr/fr/datasets/fichiers-consolides-des-donnees-essentielles-de-la-commande-publique/>

<sup>86</sup> Annex 7: [Order of 22 March 2019 on the functionalities and minimum requirements of buyer profiles](#)

<sup>87</sup> Also *infra*, p. 8-10

<sup>88</sup> **CADA, [Opinion 20062458 - Meeting of 15/06/2006](#)**





the confidentiality of economic and financial information and the confidentiality of commercial strategies). CADA therefore also appreciates the application of secrets that may limit disclosure<sup>89</sup>.

As CADA reminds on its website (paragraph dedicated to public procurement)<sup>90</sup>:

It follows from the *decision of the Conseil d'Etat of 30 March 2016, Centre hospitalier de Perpignan (No. 375529)*, that, when receiving a request for disclosure of documents relating to a public contract, the authorities subject to Book III of the CRPA must examine whether the information contained in these documents may, by affecting competition between economic operators, infringe commercial and industrial confidentiality and thus prevent such disclosure.

The Council of State also specified that, in accordance with the rules of public procurement, all parts of a public contract must be regarded as accessible, on condition that the secrets protected by law are not violated, and that, to this extent, the act of the contract commitment, the overall price of the bid and the services offered by the awarded company, in particular, are in principle accessible. On the other hand, elements which reflect the commercial strategy of a company operating in a sector and the disclosure of information likely to infringe business secrecy are, in principle, not accessible. This is the case for the unit price schedule ("*bordereau des prix unitaires*").

In **particular, the following elements are excluded from the disclosure**, and must be concealed:

- information relating to technical and human resources, quality system certification, third-party certifications and qualification certificates for the service requested;
- details of turnover, bank details and references other than those relating to public contracts;
- technical and financial details of the bids of all companies contained in the preparatory documents to the award of the contract (minutes, reports analysing the bids).
- the detailed price offer contained in the unit price schedule (20161106), the breakdown of the total and fixed price and the estimated quantitative detail (20161778) are also not accessible. There is therefore no longer any need to question the method of awarding the contract, in particular the repetitive method, its nature, duration or method of performance.

A summary table of documents that may or may not be disclosed in the context of public procurement is proposed by the CADA; it **is attached to this report (Appendix B)**. It contains a large number of documents relating to a public contract that have been the subject of an opinion from the CADA (Contract Presentation Report, Bid Analysis Report, Scoring and Ranking Elements, Letter of Application, etc.).

A recent DAJ information note also proposes a typology of open to access and non-disclosable documents, but it is certain that the CADA remains the competent authority to assess new requests for access to public procurement documents by a case-by-case assessment<sup>91</sup>.

### **Drafting techniques**

(this issue is exposed above v. standardization requirements and especially Annexe A)

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<sup>89</sup> DAJ, Fiche Technique "[La communication des documents administratifs en matière de commande publique](#)", [update 01/04/2019], p. 5 et seq.

<sup>90</sup> <https://www.cada.fr/administration/marches-publics>

<sup>91</sup> In this regard, see DAJ, Fiche technique "[La communication des documents administratifs en matière de commande publique](#)", [update 01/04/2019], 18 p.



## Benchmarking

*Benchmarking* will be used here as the approach intended to compare the performance of public entities in the face of the requirement to open data between them. In that sense, benchmarking is indeed the subject of observation in France but its results are not yet measured.

"Open data trophies" are organised and are accessible to any local authority, central or decentralised state administration, public bodies, citizen collective or association that has set up a project to open, enhance or reuse public data for the benefit of a given territory. Three competitions were held until 2018<sup>92</sup> by the "[Open data France](#)" association, which is an association created on 9 October 2013, with the aim of bringing together and supporting local authorities actively involved in the process of opening public data and encouraging all the initiatives undertaken by these authorities with a view to promoting open data.

The Open Data France association is also the one that has created an Observatory of Territories to learn and understand the progress of data opening in local authorities. The Observatory has selected relevant [indicators](#) allowing the comparability of local authorities that publish their data in open data<sup>93</sup>. The last mapping was done in March 2019<sup>94</sup>.

To date, we have not found any digital platforms or other tools to determine whether and to what extent in France the open data of public procurement could allow comparisons relevant to the control of public expenditure.

## Control authorities

France has a General Data Administrator and a multitude of other administrative entities responsible for promoting open data. Nevertheless, the Court of Auditors ("Cour des comptes") has recently pointed out the shortcomings in the management of open data.

### **General Data Administrator (AGD)**

The General Data Administrator ("*Administrateur Général des Données*", AGD) coordinates the actions of administrations in terms of inventory, governance, production, circulation and use of data by administrations. It is therefore not a control authority *stricto sensu* but an authority to support the implementation and operation of open data in France.

The General Administrator of Data (AGD) is set up by Decree No. 2014-1050 of 16 September 2014<sup>95</sup>. He is placed under the authority of the Prime Minister who appoints him (Article 1 of the Decree).

The AGD organises, with due respect for the protection of personal data and secrets protected by law, the best use of data held by public authorities and their widest circulation. His mission is structured according to article 2 of decree n°2014-1050 around three objectives:

- public policy evaluation;
- improvement and transparency of public action;
- stimulating research and innovation.

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<sup>92</sup> ; see also <https://labo.societenumerique.gouv.fr/2019/03/29/nouvelles-avancees-2018-louverture-donnees-publiques-france/>

<sup>93</sup> <http://www.observatoire-opendata.fr/les-indicateurs/>

<sup>94</sup> <http://www.opendatafrance.net/2019/03/07/observatoire-open-data-des-territoires-mise-a-jour-mars-2019/>

<sup>95</sup> [Decree No. 2014-1050 of 16 September 2014 providing for a general data administrator](#)



Without prejudice to the tasks of the National Institute of Statistics and Economic Studies and in consultation with the administrations concerned, the General Administrator of Data (Article 3 of Decree No. 2014-1050):

- Proposes to the Prime Minister strategies for operating and maximizing data produced, received or collected by administrations as part of their public service missions, including by relying on innovative companies;
- Develops the use of data sciences within administrations by developing the tools and methodology necessary for their use;
- Addresses its recommendations to the Interministerial Directorate of State Information Systems and Communication (DINSIC) on technical reference frameworks to increase the interoperability of information systems and data. He can also work on data semantization;
- Conduct experiments on the use of data to strengthen the effectiveness of public policies, contribute to the good management of public funds and improve the quality of services provided to users.

The AGD can be contacted by any person with any questions regarding data flow at [saisine.agd@data.gouv.fr](mailto:saisine.agd@data.gouv.fr). Private law entities entrusted with a public service mission may refer to it for an opinion any matter related to the use by their services of government data (Article 4 of Decree No. 2014-1050).

After consulting with the ministers, he proposes to the Prime Minister the French position on data defended in negotiations and international organizations (article 5 n°2014-1050).

The AGD submits an annual public report to the Prime Minister on the inventory, management, production and use of data by administrations (article 7 n°2014-1050).

### **Court of Auditors**

The Court of Auditors is an independent authority that *indirectly* may monitor the effectiveness of data opening.

In a recent reference to the Prime Minister, the Court of Auditors points out<sup>96</sup>:

- Difficulties in applying the LRN law (of 7 October 2016) by noting "*a lack of clear guidance from the State*" as well as recurring difficulties within institutions to comply with the obligation to publish standards of the principles data held by them;
- Inadequacies in the management of open data by noting that "several administrative entities are responsible for promoting access to public data": the CADA, the Interministerial Directorate of State Information Systems and Communication (DINSIC) and the Directorate for Research and Innovation of the General Commission for Sustainable Development ("Direction de la recherche et de l'innovation du Commissariat général au développement durable").

The Court highlights the "very difficult governance of the opening of data". This is why it calls for "more effective management of open data to avoid the accumulation of advisory opinions without a decision being taken, to the detriment of structuring projects".

### **DAJ**

The Directorate of Legal Affairs (DAJ)<sup>97</sup>, placed under the joint authority of the Minister of Action and Public Accounts and the Minister of Economy and Finance, is the department that - among other tasks - coordinates the Digital Transformation Plan for Public Procurement (PTNCP, 2018-2022)<sup>98</sup>. It is within

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<sup>96</sup> Court of Auditors, [Ref. S2018-3287](#), online on 11 March 2019 (even if the summary is limited to the issue of opening public data for three operators of the Ministry of Ecological and Solidarity Transition, its content is interesting on a more general level)

<sup>97</sup> The DAJ is created by [Order of 21 April 2009 on the organisation of the Legal Affairs Directorate of the Ministry of Economy, Industry and Employment and the Ministry of the Budget, Public Accounts and the Civil Service](#)

<sup>98</sup> DAJ, [Rapport annuel 2018](#), p. 25



this framework that it publishes technical information notes ("*Fiches techniques*") and other communication tools allowing the dematerialization of public procurement and the effective implementation of Open data in this sector. Its website contains a specific tab on the "[opening of public procurement data](#)", which is an essential source of official information on the subject.

### **DINSIC**

The Interministerial Directorate of Digital and State Information and Communication System (DINSIC) is a department of the Prime Minister in charge of the performance of the State's unified information system (IS) and the digital transformation of public action.

It promotes digital innovation methods, the use of "data sciences", the dissemination of flexible approaches, the open data and open government.

It also ensures that the State's unified IS contributes in a coherent way to simplifying relations between users and administrations.

It organizes and leads the consultation necessary for the evolution of:

- an interdepartmental method for analyzing the value of projects
  - general interoperability and accessibility standards,
  - standardized data models and exchange models, particularly for a platform state,
- in conjunction with the National Agency for Information Systems Security ("*Agence nationale de la sécurité des systèmes d'information*", ANSSI), the general security reference framework.
- It also contributes, together with the State Procurement Directorate ("*Direction des Achats de l'État*", DAE), to defining the rules and procedures applicable to purchases contributing to the IS.
  - It organizes and manages the design and implementation of mutualisation operations between administrations to combine efficiency and budget control (inter-ministerial network of the State, secure telephony, hybrid cloud of the State, FranceConnect).
  - Together with the Directorate-General for Administration and the Civil Service, the DINSIC contributes to adapting the management of the human resources of administrations in the digital professions.

Thus, setting aside competent authorities in specific areas of the open data of public procurement such as the CADA (access to administrative documents) and the CNIL (protection of personal data), there is currently no competent decision-making authority in France to control the implementation of open data, neither generally nor specifically in the field of public procurement, but a multitude of advisory and coordination actors.

### ***Sanctions***

While the opening of public procurement data is an obligation for buyers, there are currently no sanctions against administrations or local authorities that have not opened their essential data relating to public procurement.

Penalties are applicable under Article L. 326-1 CRPA in the event of re-use of public information in violation of the CRPA. Thus, fines are provided for in the case of reuse leading to alteration or distortion of public data or in the case of reuse without a licence or in violation of a licence. The CADA is competent to pronounce these penalties.

Finally, the law penalizes by criminal sanctions the disclosure of information covered by secrets.



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Characteristics of the public contract			
Nature of the contract	Yes	Text	
Pivot format : nature		Nature of the contract  Possible values : - Marketplace - Partnership market - Framework Agreement - Subsequent market	
Subject matter of the contract or lot	Yes	Text	
Pivot format : purpose		Limited to 256 characters.	
Main CPV Code	Yes	Text	
Pivot format : CPV code		The main CPV code (8 characters)  Example: 45112500	
Procurement procedure	Yes	Text	
Pivot format : procedure		Possible values : - Adapted procedure - Open call for tenders - Restricted bidding - Procedure with negotiation - Contract awarded without prior advertising or competition - Competitive dialogue	
Main place of performance	Yes	Object (properties below)	
Pivot format : placeExecution			
Place of performance code	Yes	Text	
Pivot format : placeExecution > code		Place of performance code (postal code, municipality, canton, district, department, region, country)  Example: "2B002"	
Type of code of the place of execution	Yes	Text	
Pivot format : placeExecution > typeCode		The type of code used to designate the place of performance. Apart from the "Postal Code", the codes are geographical codes managed by INSEE ( <a href="http://www.insee.fr/fr/methodes/nomenclatures/cog/default.asp">http://www.insee.fr/fr/methodes/nomenclatures/cog/default.asp</a> )  Possible values : - Postal code - Common code - Rounding code - Canton code - Department code - Region code	







Pivot format : amount		The decimal separator is the point.  Example: 14982.29	
Form of the price  Pivot format : formPrice	Yes	Text (several choices possible)  - Farmhouse - Firm and updatable - Reviewable	
Identification characteristics of economic operators			
Holders  Pivot format : holders	Yes	Object list  (see properties below)  If the market has only one holder, it is still a single entry list.  If, once the initial market data has been published, changes to the holders' data occur, they must be transcribed via a child object of Changes and not modified in the Holders object.	
Holder's identifier  Pivot format : holders > id	Yes	Text  Possible types of identifiers (favour SIRET): - SIRET (French identifier, 14 digits) - VAT (intra-community VAT number, for companies from EU Member States) - TAHITI (identifiers for Tahiti and French Polynesia, 9 digits) - RIDET (identifiers for New Caledonia, 10 digits) - FRWF (identifiers for Wallis and Futuna, "FRWF" + first 14 letters of the company name. Ex: FRWFDURANDCHAUFFAG) - IREP (French individuals, 5 digits + PLACE OF BIRTH + NAME + FIRST NAME. Ex: 18102VANNESDURANDMATHIEU) - OUT OF THE EU (identifiers for companies from countries outside the European Union. ISO 3166 country code + first 16 characters of the company name. Ex: BRDASILVAMOTORES)	
Identifier type  Pivot format : holders > typeIdentifier	Yes	Text  Possible values : - SIRET - VAT - TAHITI - RIDET - FRWF - IREP - OUTSIDE THE EU	



Company name	Yes	Text	
Pivot format : holders > corporate name		Name of the economic operator operating on the market (the unambiguous nature is ensured by SIRET)  Example: "Transit 2000 SA"	
Contract amendment			
Contract amendments (amendments)	Yes, if the contract includes amendments	Object list (see properties below)	
Pivot format : modifications			
Purpose of the amendment	Yes	Text	<a href="http://xml.insee.fr/schema/commun.html#ChaineFrancaisOfficiel_stype">http://xml.insee.fr/schema/commun.html#ChaineFrancaisOfficiel_stype</a>
Pivot format : modifications > objectModification		Limited to 256 characters.  Example: "Modification of the contractor. New holder: Rodriguez SAS".	
Date of publication of the change data	Yes	Text	ISO 8601, extended format
Pivot format : modifications > datePublicationDataModification		Date of republication of the data including modification to the format YYYY-MM-DD  INSEE type: DateType  Regular validation expression ('d{ 4} -'d{ 2} -'d{ 2} -'d{ 2})  Example: 2016-02-24	<a href="http://xml.insee.fr/schema/commun.html#Date_stype">http://xml.insee.fr/schema/commun.html#Date_stype</a>
Changing the duration	Yes, if the amendment is for the duration	Number of people	
Pivot format : modifications > durationMonths		Minimum value: 1  If the duration is not an exact number of months, round up to the next number.  Value rounded up to the next number.  Examples : - 9 for 9 months - 1 for 2 weeks - 2 for 1 month and 3 weeks	
Modification of the amount	Yes, if the modification concerns the amount allocated excluding VAT	Decimal	
Pivot format : modifications > amount		Amount excluding taxes in €  The decimal separator is the point.  Example: 14982.29	
Modification of the holders	Yes, if the amendment is about registrants	Object list	
Pivot format : modifications > registrants		(see properties below)	
Holder's identifier	Yes, if the amendment is about registrants	Text	



<p>Pivot format : modifications &gt; holders &gt; id</p>		<p>Possible types of identifiers (favour SIRET):</p> <ul style="list-style-type: none"> <li>- SIRET (French identifier, 14 digits)</li> <li>- VAT (intra-community VAT number, for companies from EU Member States)</li> <li>- TAHITI (identifiers for Tahiti and French Polynesia, 9 digits)</li> <li>- RIDET (identifiers for New Caledonia, 10 digits)</li> <li>- FRWF (identifiers for Wallis and Futuna, "FRWF" + first 14 letters of the company name. Ex: FRWFDURANDCHAUFFAG)</li> <li>- IREP (French individuals, 5 digits + PLACE OF BIRTH + NAME + FIRST NAME. Ex: 18102VANNESDURANDMATHIEU)</li> <li>- OUT OF THE EU (identifiers for companies from countries outside the European Union. ISO 3166 country code + first 16 characters of the company name. Ex: BRDASILVAMOTORES)</li> </ul>	
<p>Identifier type Pivot format : modifications &gt; registrants &gt; typeIdentifier</p>	<p>Yes, if the amendment is about registrants</p>	<p>Text</p> <p>Possible values :</p> <ul style="list-style-type: none"> <li>- SIRET</li> <li>- VAT</li> <li>- TAHITI</li> <li>- RIDET</li> <li>- FRWF</li> <li>- IREP</li> <li>- OUTSIDE THE EU</li> </ul>	
<p>Company name Pivot format : modifications &gt; holders &gt; corporate name</p>	<p>Yes, if the amendment is about registrants</p>	<p>Text</p> <p>Name of the economic operator operating on the market (the unambiguous character is ensured by the identifier)</p> <p>Example: "Transit 2000 SA"</p>	
<p>Date of notification of the change Pivot format : modifications &gt; dateSignatureModification</p>	<p>Yes</p>	<p>Text</p> <p>Contract signature date in YYYY-MM-DD format</p> <p>INSEE type: DateType</p> <p>Regular validation expression ('d{ 4} -'d{ 2} -'d{ 2} -'d{ 2})</p> <p>Example: 2016-02-24</p>	<p>ISO 8601, extended format</p> <p><a href="http://xml.insee.fr/schema/commun.html#Date_type">http://xml.insee.fr/schema/commun.html#Date_type</a></p>







		Value rounded up to the next whole number.  Examples : - 9 for 9 months - 1 for 2 weeks - 2 for 1 month and 3 weeks	
Date of signature  Pivot format :  dateSignature	Yes	Date of signature of the concession contract in YYYY-MM-DD format  INSEE type: DateType  Regular validation expression ('d{ 4} -'d{ 2} -'d{ 2} -'d{ 2})  Example: 2016-02-24	ISO 8601,  extended format  <a href="http://xml.insee.fr/schema/commun.html#Date_stype">http://xml.insee.fr/schema/commun.html#Date_stype</a>
Initial date of publication of essential data  Pivot format :  datePublicationData	Yes	Date on which the essential data of the concession contract was first published on the buyer profile. This date is therefore not updated in the event of a modification of the concession contract.  Date in YYYY-MM-DD format  INSEE type: DateType  Regular validation expression ('d{ 4} -'d{ 2} -'d{ 2} -'d{ 2})  Example: 2016-02-24	ISO 8601,  extended format  <a href="http://xml.insee.fr/schema/commun.html#Date_stype">http://xml.insee.fr/schema/commun.html#Date_stype</a>
Start date of execution  Pivot format :  StartDateExecution	Yes	Start date of execution of the concession contract  Date in YYYY-MM-DD format  INSEE type: DateType  Regular validation expression ('d{ 4} -'d{ 2} -'d{ 2} -'d{ 2})  Example: 2016-02-24	ISO 8601,  extended format  <a href="http://xml.insee.fr/schema/commun.html#Date_stype">http://xml.insee.fr/schema/commun.html#Date_stype</a>
Financial characteristics			
Total value (excluding VAT) assigned  Pivot format :  TotalValue	Yes	Decimal  The decimal separator is the point.  Example: 14982.29	
Amount of public subsidy  Pivot format :  amountPublicSubsidy	Yes	Decimal  The decimal separator is the point.  Example: 14982.29	
Data on the execution of the concession contract			
Data on the execution of the concession contract  Pivot format :  dataExecution	Yes	Object list  Data on the execution of the concession contract on a given date. Every year, the licensing authority publishes the	





		<p>implementation data until the end of the concession contract.</p> <p>These data are only included from the first year onwards, not when the data are first published following the notification.</p>	
<p>Date of publication of execution data</p> <p>Pivot format :</p> <p>dataExecution &gt; datePublicationDataExecution</p>	Yes	<p>The date on which the execution data were published.</p> <p>Date in YYYY-MM-DD format</p> <p>INSEE type: DateType</p> <p>Regular validation expression ('d{ 4} -'d{ 2} -'d{ 2} -'d{ 2})</p> <p>Example: 2016-02-24</p>	
<p>Capital expenditure</p> <p>Pivot format :</p> <p>dataExecution &gt; expensesInvestment</p>	Yes	<p>Decimal</p> <p>Capital expenditure incurred by the concessionaire.</p> <p>The decimal separator is the point.</p> <p>Example: 14982.29</p>	
<p>Rates to be paid by users</p> <p>Pivot format :</p> <p>dataExecution &gt; prices</p>	Yes	<p>Object list (properties below)</p> <p>The main tariffs to be paid by users.</p>	
<p>Title of the tariff</p> <p>Pivot format :</p> <p>dataExecution &gt; prices &gt; titleTariff</p>	Yes	<p>Text</p> <p>Title of the tariff</p> <p>Maximum 256 characters</p>	
<p>Price list</p> <p>Pivot format :</p> <p>dataExecution &gt; prices &gt; price list &gt; price list</p>	Yes	<p>Decimal</p> <p>The decimal separator is the point.</p> <p>Example: 14.29</p>	
<b>Identification characteristics of economic operators</b>			
<p>Concessionaires</p> <p>Pivot format :</p> <p>dealerships</p>	Yes	<p>Object list</p> <p>(see properties below)</p> <p>If the concession contract has only one concessionaire, it is still a one-way list.</p> <p>If, once the initial data of the concession contract has been published, changes are made to the holders' data, they must be transcribed via a child object of Modifications and not modified in the holders object.</p>	
<p>Dealer ID</p> <p>Pivot format :</p>	Yes	<p>Text</p> <p>Possible types of identifiers</p>	



dealers > id		(favour SIRET): - SIRET (French identifier, 14 digits) - VAT (intra-community VAT number, for companies from EU Member States) - TAHITI (identifiers for Tahiti and French Polynesia, 9 digits) - RIDET (identifiers for New Caledonia, 10 digits) - FRWF (identifiers for Wallis and Futuna, "FRWF" + first 14 letters of the company name. Ex: FRWFDURANDCHAUFFAG) - IREP (French individuals, 5 digits + PLACE OF BIRTH + NAME + FIRST NAME. Ex: 18102VANNESDURANDMATHIEU) - OUT OF THE EU (identifiers for companies from countries outside the European Union. ISO 3166 country code + first 16 characters of the company name. Ex: BRDASILVAMOTORES)	
Identifier type  Pivot format :  dealers > typeIdentifier	Yes	Text  Possible values : - SIRET - VAT - TAHITI - RIDET - FRWF - IREP - OUT OF THE EU	
Company name  Pivot format :  dealers > corporate name	Yes	Text  Name of the economic operator involved in the concession contract (the unambiguous character is ensured by the identifier)  Example: "Transit 2000 SA"	
Amendment of the concession contract			
Changes to the concession contract  Format pivot :  Amendments to the Regulations	Yes	Object list (see properties below)	
Purpose of the amendment  Format pivot :  modifications > objectModification	Yes	Text  Limited to 256 characters.  Example: "Modification of the concessionaire. New dealer: Rodriguez SAS "	<a href="http://xml.insee.fr/schema/commun.html#ChaineFrancaisOfficiel_stype">http://xml.insee.fr/schema/commun.html#ChaineFrancaisOfficiel_stype</a>
Date of publication of the change data  Pivot format :	Yes	Text  Date of republication of the data including modification to	ISO 8601,  extended format



<p>modifications &gt; datePublicationDataModification</p>		<p>the format YYYY-MM-DD</p> <p>INSEE type: DateType</p> <p>Regular validation expression ('d{ 4} -'d{ 2} -'d{ 2} -'d{ 2})</p> <p>Example: 2016-02-24</p>	<p><a href="http://xml.insee.fr/schema/commun.html#Date_stype">http://xml.insee.fr/schema/commun.html#Date_stype</a></p>
<p>Changing the duration</p> <p>Pivot format : modifications &gt; durationMonths</p>	<p>Yes, if the amendment is for the duration</p>	<p>Number of people</p> <p>New duration of the concession contract.</p> <p>Minimum value: 1</p>	
<p>Change in the overall value excluding VAT</p> <p>Pivot format : modifications &gt; GlobalValue</p>	<p>Yes, if the modification concerns the overall value</p>	<p>Decimal</p> <p>New overall value of the concession contract.</p> <p>The decimal separator is the point.</p> <p>Example: 14982.29</p>	
<p>Date of signature of the amendment</p> <p>Pivot format : modifications &gt; dateSignatureModification</p>	<p>Yes</p>	<p>Text</p> <p>Date of signature of the amendment to the concession contract in YYYY-MM-DD format</p> <p>INSEE type: DateType</p> <p>Regular validation expression ('d{ 4} -'d{ 2} -'d{ 2} -'d{ 2})</p> <p>Example: 2016-02-24</p>	<p>ISO 8601, extended format</p> <p><a href="http://xml.insee.fr/schema/commun.html#Date_stype">http://xml.insee.fr/schema/commun.html#Date_stype</a></p>



**ANNEX B (OF THIS REPORT)**

**The CADA summary table of documents that may or may not be disclosed in the context of public procurement**

Summary table of documents that may or may not be disclosed in connection with the award of a public contract

	Disclosure reserve	without	Disclosure after deletion of terms protected as industrial and commercial secrets	Prohibition on Disclosing information
<b>1) the consultation documents</b>				
Notice of Public Competitive Bidding	X			
Special administrative and technical clauses (CCAP and CCTP); rules of consultation; plans and other supporting documents made available to candidates, "blank" unit price schedule (not completed by candidates)	X			
Notice of award	X			
<b>2. documents drawn up by the contracting authority after submission of applications or tenders</b>				
List of candidates eligible to submit a tender	X			
Market Presentation Report ( <a href="#">20161507</a> )			X	
Minutes of the opening of tenders, bids or tenders ( <a href="#">20161509</a> )			X	
Bid analysis report ( <a href="#">20161692</a> , <a href="#">20172534</a> ), scoring and ranking elements, ( <a href="#">20161512</a> )			information concerning the successful tenderer may be communicated, except for information covered by industrial and commercial secrecy, but information relating to other candidates may not be communicated (except to the applicant himself)	
Rating method used ( <a href="#">20172534</a> )				
Exchanges with candidates during the possible negotiation, questions asked and answers, regularizations... ( <a href="#">20170969</a> , <a href="#">20170879</a> )			X	
Contract Notification Letter ( <a href="#">20162113</a> )			X	
<b>3) The bid and offer of the contractor</b>				



Application letter (DC1 or DC2) ( <a href="#">20170927</a> )		X	
Application form		XNe must not be communicated: technical and human resources, quality system certification, certifications; information concerning turnover, bank details and references other than those corresponding to public contracts	
Annual statement of certificates received		X	
Total price offer ( <a href="#">20161692</a> )	X		
Detailed price offer contained in the unit price schedule (BPU), the breakdown of total and flat-rate prices (DPGF) or the estimated quantitative detail ( <a href="#">20161106</a> , <a href="#">20161778</a> )			X
Technical memorandum, Technical and financial details of the offer, quotation ( <a href="#">20172802</a> )			X
Brands and products proposed in his offer by the successful candidate	Open to access (“ <i>Communicable</i> ”) if it is the very purpose of the contract (supply contract): <a href="#">20164396</a> , <a href="#">20173027</a>		Not open to access (“ <i>non communicable</i> ”) if it is a works contract: the materials proposed are part of the technical process that is protected ( <a href="#">20170927</a> , <a href="#">20165913</a> )
Deed of Engagement and its Annexes ( <a href="#">20161134</a> )		X after blinking out the bank or RIB details and the financial appendix	
<b>4) Files of unsuccessful companies</b>			
Application form			X
Overall price offer	X		
Technical and financial details of the offer			X
<b>5) Documents relating to the performance of the public contract</b>			
Purchase Orders and Invoices ( <a href="#">20172207</a> , <a href="#">20172420</a> )		X	
Service Orders ( <a href="#">20172207</a> )		X	
Minutes of receipt ( <a href="#">20171870</a> , <a href="#">20165665</a> )		X	
Final settlement, global and final settlement ( <a href="#">20174139</a> )		X	



Implementation schedule ( <a href="#">20170927</a> )		X	
Amendments ( <a href="#">20170879</a> )		X	
Subcontracting agreement, form DC4 ( <a href="#">20174112</a> )		X	
Supporting documents for the Financial Regulation		X	

**Date Form:**

Wednesday, July 18, 2018 source: <https://www.cada.fr/administration/marches-publics>

**APPENDIX C**

**Infographics relating to the opening of essential public contracts data**

# Ouverture des données essentielles des marchés publics

### Quelles données ?

- Numéro d'identification du marché : année de notification + n° d'ordre interne + n°modification
- Identification de l'acheteur : nom de l'acheteur + SIRET
- Données relatives aux marchés : Nature + procédure + CPV + lieu d'exécution + montant + forme du prix + durée + date de notification
- Titulaire du marché : nom du titulaire + SIRET
- Modification du marché : objet et/ou nouveau montant et/ou nouvelle durée et/ou nouveau titulaire

### Quel format ?

Référentiels fixant le format, les normes et nomenclatures (annexes de l'arrêté)

Modèles constituant la description de l'organisation des données

Schémas permettant de vérifier la validité et la conformité de la structure des données

Catalogue de données conforme au standard Data Catalog Vocabulary (DCAT) développé par le World Wide Web Consortium

### Modalités de publication

**En accès libre, direct et gratuit**

En consultation => visualisation simple et directe des données

En téléchargement => format XML ou JSON

Licence de réutilisation

Moteur de recherche

### Quand ?

Au plus tard le 1er octobre 2018

### Où ?

Sur le profil d'acheteur

### Qui ?

Tous les acheteurs

### Objectifs :

- Transparence
- Interopérabilité des données
- Remontée automatique des données

### Pourquoi ?

- Outils de suivi de la politique achat => amélioration de la connaissance et l'évaluation des marchés publics
- Meilleure perception du tissu économique (sourcing / attractivité du territoire)
- Meilleure perception des pratiques contractuelles
- Détecter des opportunités
- Rétablissement de la confiance publique (mécanisme de prévention de la corruption)
- Meilleure connaissance des marchés publics passés
- Meilleur accès à la commande publique

### Histoire de la publication des données

1. Notification du marché public à l'attribitaire
2. Publication des données
3. Exécution du marché
4. Modification du marché
5. Publication des données relatives à la modification
6. Fin de l'exécution du marché
7. Fin de la mise à disposition des données sur le profil d'acheteur

**2 mois** (between steps 1 and 2)

**2 mois** (between steps 4 and 5)

**5 ans** (between steps 7 and 6)

*possibilité 1 an si transmission à data.gouv.fr*

Plus d'informations sur le site de la Direction des Affaires Juridiques :

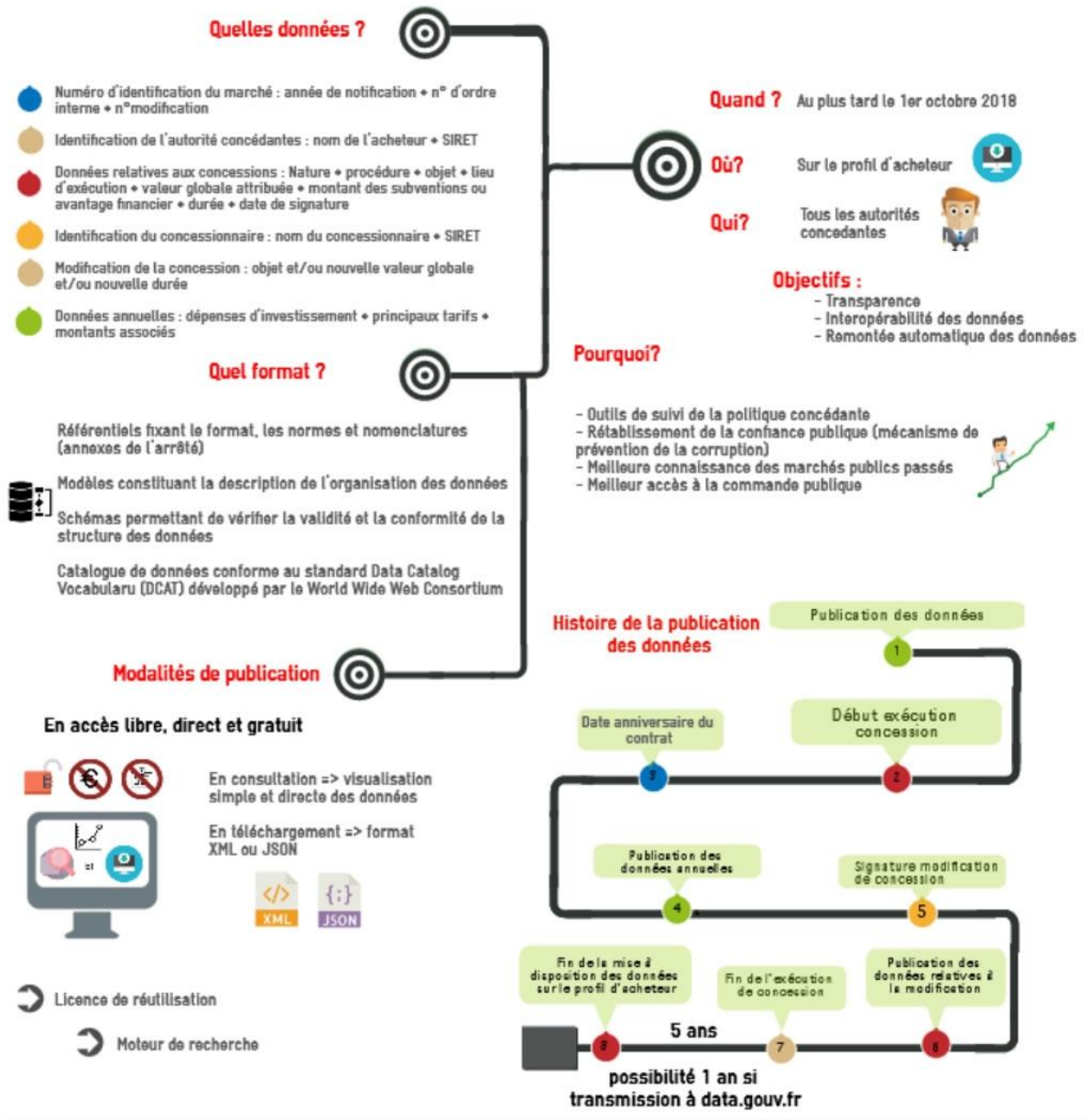
- Annexe 15 du code de la commande publique relatif aux données essentielles ;
- Fiche relative à la mise à disposition des données essentielles des contrats de la commande publique ;
- Annexe 8 du code de la commande publique relatif aux fonctionnalités et exigences minimales du profil d'acheteur ;
- Fiche relative à la définition et les fonctionnalités du profil d'acheteur.



**APPENDIX D**

**Infographics relating to the opening of essential concession contract data**

# Ouverture des données essentielles des concessions



Plus d'informations sur le site de la Direction des Affaires Juridiques :

- Arrêté du 14 avril 2017 (NOR : ECFM1637256A) relatif aux données essentielles de la commande publique ;
- Fiche relative à la mise à disposition des données essentielles des contrats de la commande publique ;
- Arrêté du 14 avril 2017 (NOR : ECFM1637253A) relatif aux fonctionnalités et exigences minimales du profil d'acheteur ;
- Fiche relative à la définition et les fonctionnalités du profil d'acheteur.