

Results of the MS Consultation on the review of the application of Directive 2003/98/EEC on the re-use of public sector information

1. Background and structure of the consultation

Directive 2003/98/EC of Parliament and Council on the re-use of public sector information (PSI) was adopted on 17 November 2003. It regulates the behaviour of public sector bodies when they act in the market by trading information (e.g. geographical, statistical or meteorological data) or making it available for re-use.

The adoption of the Directive has created new opportunities for the content industry in Europe to exploit PSI for added-value information products and services, particularly with cross border effects (navigation systems, meteorological services, etc) and improved the conditions for public sector bodies to widely disseminate, share and allow the re-use of its data.

The Directive itself establishes that the Commission will submit a report to the European Parliament and the Council in 2008 on the results of the review of the application of the Directive.

In this context a questionnaire was submitted to the Member States (MS) to provide the Commission with their views on the above mentioned topic. The questionnaires were sent to the MS through their representatives in the PSI Group¹ on 19th May 2008, the deadline for reception of responses was extended until the 15th of September 2008. The consultation is divided into 3 specific sections: i) implementation and impact of the Directive, ii) scope of the Directive and, iii) looking ahead.

14 MS have responded to the questionnaire. The reports are available at http://ec.europa.eu/information_society/policy/psi/index_en.htm for those cases for which the Commission has been given authorisation to make them public.

2. General orientation of the replies

The consultation has to a great extent yielded substantial positive feedback on the impact of the PSI re-use among MS, which consider that from a qualitative point of view, the PSI Directive has been positive as it provides a legal framework for the re-use of the PSI in their respective countries, unregulated before. The Directive has set a new policy in the MS and in the EU and provided a set of principles to which public bodies have now to comply with regarding the re-use of PSI, and has triggered many actions by the MS.

From a quantitative point of view some MS consider that it is too early to tell what the impact of the Directive has been, due to the late transposition into national legislation in certain cases. Others consider that it is very difficult to provide factual economic figures for measuring the impact of re-use policies in their respective countries. Those MS (e.g. UK, Slovenia, France) that have implemented a considerable number of additional measures to support the implementing legislation of the Directive, (for example through the establishment

¹ It consists of Member States officials, local or regional authorities, representatives from private sector organisations that meet regularly to exchange good practises of PSI re-use and initiatives supporting PSI re-use and discuss practical issues regarding transposition of the PSI Directive

of national bodies responsible for PSI re-use matters or set up national redress mechanisms, see below) state that the Directive has had a positive impact in the information market.

However, MS have also signalled that the full potential of PSI re-use is far from being attained due to the lack of awareness by public sector bodies of the opportunities offered and of their responsibilities as regard PSI re-use, and due to the limited knowledge by the private sector of the availability and potential of PSI re-use. In addition certain MS have indicated that the private sector faces important difficulties in finding what type of PSI is available for re-use as well as their difficulty in discussing PSI re-use with different levels of government. MS have also signalled the problems private companies face when the public bodies compete commercially with them in the market, notably when the latter is undertaking its public task.

As regards the impact on pricing, most Members States believe that the Directive has facilitated and consolidated a general trend on applying low and even marginal cost pricing regimes in their respective countries and greater transparency has been introduced within all levels of governments when establishing prices.

As regards the scope of the Directive, the vast majority of respondents highly value the potential for re-use of the information held by cultural, research and public broadcasting institutions, however most of them consider that there are no grounds to widen the scope to bring these sectors within the scope of the Directive. MS consider that the material these institutions hold include substantial third party IPRs and copyright that would not be allowed for re-use and, and the administrative burden and associated costs these institutions would incur in order to comply with the principles of the Directive would not outweigh the potential benefits. There seems to be a common view that a substantial cost/benefit study on this topic should be undertaken before considering extending the scope of the Directive. It should also be noted that three MS (LT,LV,BE) would like the scope to be extended to the currently excluded sectors.

A few MS have indicated that the PSI Directive establishes minimum standards to harmonise the re-use of PSI in the EU, but at the same time encourages MS to go beyond this minimum level of harmonisation. Some of them have hence decided to go even further than the provisions of the Directive and have for example declared their plans to apply in the future a marginal cost pricing to all federal government PSI (NL), or has decided that all public sector information must be available for re-use (Slovenia).

The overwhelming majority of the MS believe that, at present, it is too premature to review the Directive, preferring to allow some further time for its full implementation and to reconsider a possible review at a later stage.

Almost all of the MS concerned consider that there is a need for raising awareness among public sector bodies and informing private companies about the potential of PSI re-use in the information market. Similarly almost all MS believe that the issuance of some guidelines or a set of good practices by the Commission could clarify some of the terms present in the Directive which they believe may need clarification. The definition of "public task", "reasonable rate of return" and "marginal cost pricing" have been identified by several of the respondents.

3. Replies to the individual questions

The following overview, based on the replies to the seven questions of the questionnaire, gives an indication of the types of comments and ideas brought forward in the submissions. It cannot give a full account of the variety of the replies received. For clarity reasons some of the comments have been regrouped, even if they were submitted in relation to different questions.

The questionnaire is divided into 3 specific sections:

i) Implementation and impact of the Directive, ii) scope of the Directive and, iii) looking ahead.

Implementation and impact of the Directive

1. In addition to transposition measures, could you please indicate additional practical /deployment measures (e.g. national portals, asset lists, etc.), that have been taken in your State or by the main Public Sector Content Holders in your country to facilitate the re-use of PSI?

All of the MS that have responded to this consultation have signalled that they have established and implemented additional practical/deployment measures to facilitate the re-use of PSI in their countries. The establishment of redress mechanisms was mentioned several times (FR, UK, SLO), two MS (UK, SLO) have introduced specific bodies to oversee the re-use of PSI, and many have developed specialized national PSI portals. The implementation of the INSPIRE Directive has partially contributed to this some MS suggest.

Others have established PSI asset registers for identifying the PSI that is available for re-use in their country and have undertaken awareness campaigns within different levels of government (in FR 1300 persons have been designated, in application of the national legal implementation measures, responsible for re-use in public sector bodies). It seems that most MS are aware that the introduction of deployment measures in addition to adopting national implementing regulations is paramount to fully attain the potential of PSI. Most of the MS have signalled that they are in the process of adopting further deployment measures.

2. Do you consider that the Directive has had an impact on the information market in your country? If so, how?

The MS consider that from a qualitative point of view that the PSI Directive has been positive as it provides a legal framework for the re-use of the PSI in their respective countries, establishing a set of key principles to which public bodies will have to comply with regarding the re-use of PSI. The Directive has raised awareness in public sector bodies on a complete new area for many of them. For example some countries report that for the first time the re-use of information is now allowed, non discriminating conditions are now in place and exclusive agreements are prohibited. The Directive has triggered a new consciousness among the private sector on their PSI re-use rights which is beginning to emerge.

However, from a quantitative point of view, some MS consider that due to the late transposition into national legislation in certain cases it is too early to tell what the real impact of the Directive has been, other MS consider that it is very difficult to provide factual economic figures for measuring the impact of re-use policies. Nevertheless, those MS that have introduced a considerable number of additional measures to support the implementing legislation of the Directive, (for example through the establishment of national bodies

responsible for PSI re-use matters or set up national redress mechanisms) state that the Directive has had a positive impact in the information market.

3. Has the implementation of the Directive resulted in a revised charging policy by public sector bodies?

As regards the impact on pricing, most Member States believe that the Directive has facilitated and consolidated a general trend on applying low and even marginal cost pricing regimes in their respective countries, and greater transparency and non discriminatory conditions have been introduced within all levels of governments when establishing prices.

Most of the MS have indicated that in principle the Directive has not formally resulted in a change in their charging policy and cost recovery policies remain in certain public bodies (some laudable exceptions exist). For example one Member State has signalled that over 70% of its PSI is available for free.

Suggestions have been made in order to undertake further studies to analyse the economic case of implementing a marginal cost pricing regime to PSI.

4. What kind of problems do you believe private companies in your country are encountering when wishing to re-use public sector information?

Firstly, MS have reported that private companies have not taken yet full advantage of the opportunities PSI re-use may offer. There is a feeling among some respondents that despite their efforts, demand for PSI re-use has not emerged. MS have also signalled that the full potential of the PSI re-use is far from being attained due to the lack of awareness by the private sector on the availability and potential for the re-use of PSI.

In addition MS have indicated that the private sector faces important difficulties in finding what type of PSI is available for re-use as well as their difficulty in discussing PSI re-use with different levels of government, as there is a lack of awareness amongst certain public sector bodies of their responsibilities, most notably in local government. Some countries have also signalled that private companies report facing problems when the public bodies compete commercially with them in the market when the latter is undertaking its statutory public task. There is a common view that there is a lack of clarity as to what constitutes a public sector body's public task. In addition private firms complain about the high prices public bodies impose on them for purchasing data, this being a significant barrier especially for SMEs. Almost all respondents consider that facilitating PSI re-use for the private sector seems to be an important area for improvement.

II. Scope of the Directive

5. Would it be appropriate to include cultural establishments, education and research organisations and public service broadcasters, within the scope of the Directive?

6. What would be the impact and societal benefits of including these sectors within the scope of the Directive? What are the problems these excluded sectors may encounter should they be included within the scope of the Directive?

As regards the inclusion of the certain specific sectors (cultural, research and public broadcasting institutions) within the scope of the Directive, a great majority of the responses

while signalling the high value of the collections and the potential re-use inherent to these works support the current status quo. These MS consider that as these institutions are mainly holders of third party intellectual property rights and copyright and that the administrative burden (e.g. copyright clearance) and costs that these institutions would face to comply with the Directive would not outweigh the relative limited benefits their inclusion within the scope of the Directive would offer.

Similarly, some MS have drawn out attention to the fact that these institutions are currently involved in commercial activity and generate some income from it (e.g. UK, Ireland). They believe that if this income would diminish should they become within the scope of the Directive, they are certain that these lack of funds would not be covered by the central government.

However, a few MS expressed a favourable opinion towards reconsidering the current scope and bringing in these specific sectors under the scope of the Directive, signalling that it would increase the transparency in those sectors. Another MS suggests that it is open to consider research institutions (scientific information) under the scope of the Directive. The vast majority however considered that a thorough cost/benefit analysis has to be undertaken prior to considering bringing these institutions within the scope of the Directive.

III. Looking ahead

7. What technical, organisational, legal and practical measures could be established by national administrations and/or at European level to optimise the re-use of PSI (e.g. efficient dispute settlement mechanisms)?

Many different suggestions have been highlighted by the MS to optimise the re-use of PSI.

Technologically: to facilitate and encourage re-use, information must be available for re-use purposes. In this context some MS have indicated establishing semantic web standards to ensure better discovery through metadata and interoperability (open formats) and developing national information infrastructures

Regulators: some MS have indicated the need for the establishment of regulatory bodies which would be responsible for overseeing all aspects of PSI, including redress mechanisms issues.

Awareness: most MS agree that there is a great need to undertake awareness campaigns at all levels on government of their responsibilities. In addition systematic MS reporting to the Commission of the actions taken after a period of time was also mentioned. Actions should also be undertaken with the private sector in order to highlight the PSI potential. The setting up of different working groups at EU level was also proposed.

Guidance: issued preferably by the Commission on certain issues such as public task or third party intellectual property rights, is considered useful by MS.

8. Should legislative amendments be introduced in the Directive to make it more efficient? If so, which ones and why? Would guidelines on proper implementation and application of the Directive be useful?

The overwhelming majority of MS believe that it is at present, too premature to review the Directive, preferring to allow some further time for the full implementation of the Directive, and to reconsider a possible review at a later stage. Amendment to the current scope of the Directive was suggested by 3 MS and partially by one.