

An aerial photograph of a city street with buildings and cars. A semi-transparent dark grey box is overlaid on the left side of the image, containing the text 'Re-use of public-sector information: progress and plans'.

# Re-use of public-sector information: progress and plans



## What I'd like to cover:

- The basics of the current Directive
- Changes proposed by the Commission
- Issues for EuroGeographics members
- Progress in Parliament and Council
- Prospects for eventual agreement

## The PSI Directive ...

- ensures a level playing field for re-users of public sector information;
- sets an expectation that information that is publicly accessible should be available for re-use;
- establishes a general rule that charges for re-use should not exceed marginal costs ...
  - but exempts bodies that are required to cover a substantial part of their public task costs with income
  - and allows Member States to exempt specific datasets for which a public body is required to cover its costs

## Scope of the PSI Directive

- ‘Documents’ created as part of public task
  - where a document is any content, or part of such content, whatever its medium
- Right of re-use depends on right of access

## PSI Directive – issues to be addressed by review

- Availability of data held by utilities and transport operators
- Availability of research data
- Ready availability of data that change in real time ('dynamic data')
- Risk of near-exclusive arrangements with the private sector
- Charges above marginal cost (believed to hold back re-use)
- **Solution: a recast Directive, introducing significant changes**

# Key players - Parliament

## Committee Responsible: ITRE (Industry, Research & Energy)

- Rapporteur: Neoklis Sylikiotis (GUE, Cyprus)
- Shadow Rapporteurs: Michal Boni (EPP, Poland), Razvan Popa (S&D, Romania), Morten Helveg Petersen (ALDE, Denmark), Julia Reda (Greens/EFA, Germany), Nikolay Barekov (ECR, Bulgaria), Dario Tamburrano (EFDD, Italy)

## Associated Committee: IMCO (Internal Market & Consumer Protection)

- Rapporteur: Julia Reda (Greens/EFA, Germany)

## Committees for Opinion:

- CULT (Culture & Education)
- LIBE (Civil Liberties, Justice & Home Affairs)

## Progress in Parliament

- Discussion of Rapporteur's draft report, 9 October 2018
- Last date for ITRE amendments: 11 October 2018
- IMCO report adopted 11 October 2018, including all compromise amendments

## Progress in Council

- Policy debate in Telecoms Council 8 June
- Examination in Telecoms Working Party on 12 June, 12 July, 4 & 20 September, 4 October
- Third Presidency compromise proposal on 1 October
- Member States' written comments required by 15 October



# High-value datasets

## Issue

The Commission recognises that some datasets are of especially high social and/or economic value for re-use, but may not be open (for example because the exemption for cost-recovery applies)

## Commission Proposal

Create a list of fundamental high-value datasets that must be available **free** via APIs

May not be free if Commission impact assessment indicates distortion of competition

## Criteria for ‘high-value datasets’

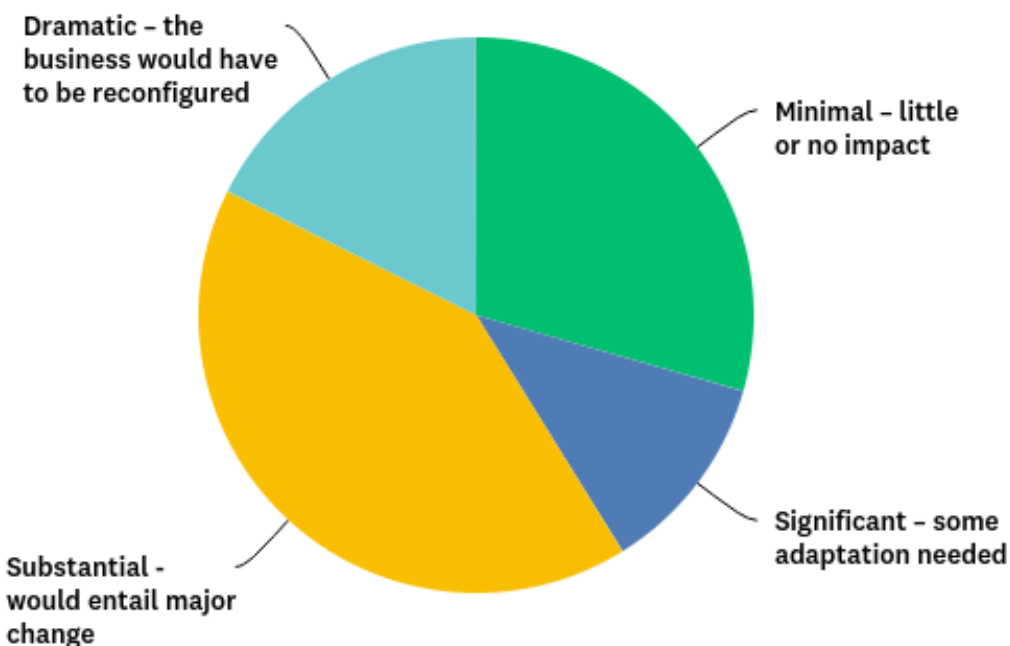
- Potential to generate socio-economic benefits
- Number of users and the revenues they may help generate
- Potential for being combined with other datasets
- Based on the list created by the Open Government Partnership

## Article 13 delegated act

- Article 290 TFEU: *A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act*
- The Article 13 delegation is for 5 years - auto-renews and remains in force unless revoked
- Commission has to consult Member State experts (Article 14)
- Delegated act comes into force automatically unless Parliament or Council objects
- *How can the Commission's Impact Assessment be considered complete without knowing the impact of the delegated act?*
- *Might the delegated act be held to amend essential elements (charging principles)?*

# Our survey of members ...

Q3 If my organisation's geospatial data were to feature in the Commission's list of high-value datasets to be made open and free, I would expect the impact on my organisation's business model to be:



# Charges above marginal cost

## Issue

The general rule is that public sector bodies cannot charge more than marginal costs, but higher charges are still widespread

## Commission Proposals

Retain the exemption for public-sector bodies that are required to recover a substantial proportion of their costs ...

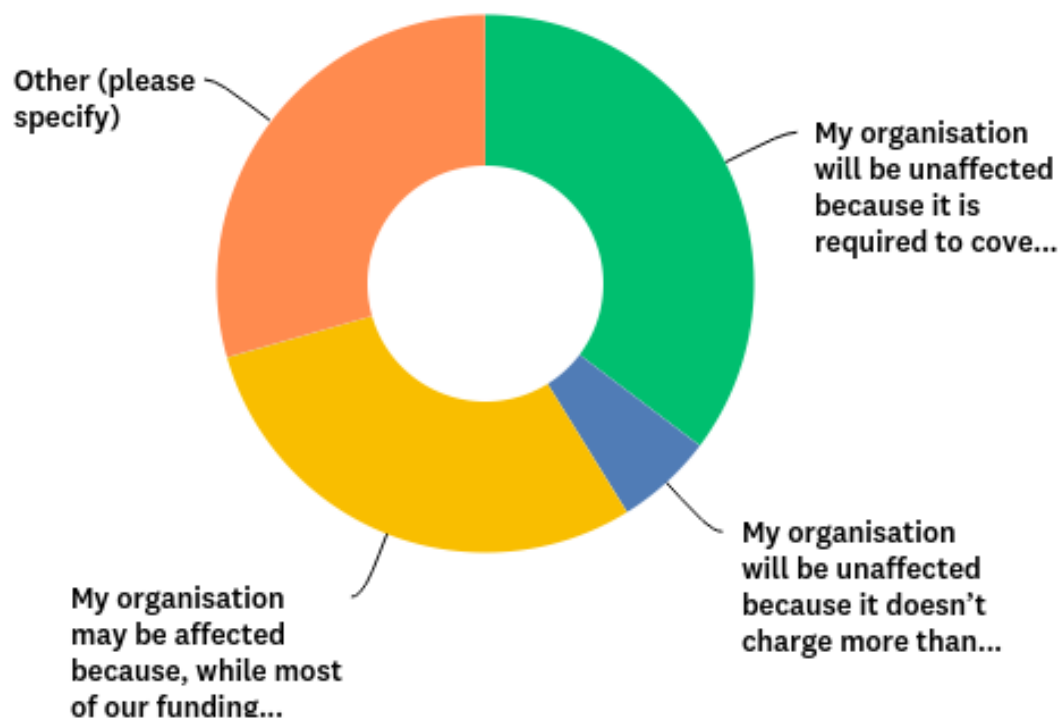
... but remove the exception that can be applied to specific datasets held by other public-sector bodies

Place a limit on 'reasonable return on investment' (5% points above ECB base rate)



# Our survey said ...

Q2 Thinking about the proposal to change the exceptions to marginal cost pricing, I believe:



# Dynamic data

## Issue

Data that change in real time or near-real time can be of great value for re-use, but are often not readily available in a form that suits potential users

Examples include traffic data, satellite data and weather data

## Commission Proposal

Require Member States to make dynamic data available in a timely manner and to introduce APIs to facilitate re-use

# Use of sui generis right of Database Directive

## Issue

The Commission believes that public-sector bodies may exploit the *sui generis* right in the Database Directive, which prevents unauthorised extraction, to prevent re-use

## Commission Proposal

Prevent public sector bodies from exercising the *sui generis* right provided by the Database Directive in order to prevent or restrict the re-use of documents pursuant to this Directive

# Key points of our latest information paper

- The Proposal empowers the Commission to adopt a list of high-value datasets that must be made available free of charge under conditions compatible with open licences. We believe that Article 13 should provide for implementing acts rather than a delegation to ensure that the impact is fully assessed and the provision and value of such datasets is sustained in the long term.
- Article 6(2)b should be retained to ensure the availability for re-use of public sector information that otherwise might not be provided
- The definition of Dynamic data in Article 2(6) should be clarified to ensure that the focus is on the frequency of provision reflecting volatility or rapid obsolescence of the data being collected, rather than the frequency of update of databases.
- Finally, there is a proposal that will amend the way in which the Database Directive operates. In our view, any change to the operation of the Database Directive should be made by amendment of the Directive itself in order to preserve its integrity and avoid legal uncertainty.

# Rapporteur's main proposals

- Delete extension of scope to public undertakings (competition concerns)
- Strengthen protection of personal data
- Remove restriction on use of *sui generis* right by public-sector bodies
- Define 'open licence'
- Expand meaning of marginal cost (to the point of meaninglessness!)
- Reinstate Article 6(2)(b)
- Add requirement for licences to be open licences (Article 8)
- Add annex listing high-value datasets, including:
  - Maps - geographic mapping data including routes, paths, roads or other traffic routes, stretches of water, elevation and altitude/height; at least at a scale of 1:20 000



# IMCO compromise amendments

- Rename Directive ‘*Open Data and the re-use of public sector information*’
- Establish principle of ‘Open by design and by default’ (meaning ...?)
- Require MS to provide public information and support for re-users
- Add specific technical and interoperability requirements for APIs
- Restrict charging above marginal costs (Article 6(2)(a)) to bodies that are required to recover at least 60% of their costs
- Allow data storage costs as part of marginal costs
- Discourage use of licences
- Add annex listing high-value datasets, including:
  - Spatial data subject to Directive 2007/2/EC (INSPIRE), including postcodes, national and local maps (cadastral, topographic, marine, administrative boundaries, at a scale of at least 1:20.000)

# Presidency compromise text

- Improve the definition of ‘dynamic data’
- Add provision for bulk downloads in addition to availability through APIs
- Replace delegated act with implementing acts subject to the examination procedure
- Allow 2-year reprieve, for bodies required to cover their costs, if free availability would have a substantial impact on their budget.
- Set up MS Committee on Open Data and the Re-Use of Public Sector Information to assist the Commission

# Indicative timescales

## Parliament:

- ITRE Committee vote provisionally 3 December 2018
- Plenary vote Q1 2019

## Council:

- The Presidency`s intention is to use the present compromise text as the basis for a negotiating mandate, which will be requested from COREPER on 31 October or 7 November
- Adoption of Directive: mid-2019

# Possible outcomes

- Strong support from stakeholders for the Commission's approach, so ...
- Article 13 appears to be here to stay
- Good probability of replacing delegated act with implementing acts?
- Avoid getting a list of datasets annexed to the Directive
- Watch out for compromise of the principle that access rights precede re-use rights

*How anxious are we to get the right outcomes?*

*How much influence do we think we/members can exert?*

# What members expect of EuroGeographics...

Q4 In respect of Article 13 (high-value datasets) I think EuroGeographics should:

