

EuroGeographics Briefing Paper

Proposal to amend the

Directive on re-use of public sector information

[2011/0430 (COD)]

Reference: June 2012 PSI BP V2.0

Briefing

The amending Proposal aims to move the existing Directive forward into the era of the Digital Agenda. EuroGeographics and our Members, as providers of quality digital content, welcome this direction. To deliver workable outcomes, and to make best use of the opportunities this direction presents, we have identified four areas that we believe will benefit from improvement, possibly through amendments to the text.

- The general principle could have unintended consequences for the sustainable supply of information and its ongoing maintenance
- The rules on charging should continue to allow all information holders to continue to make their information available for reuse while managing negative impact on public finances
- The requirement for data to be provided in machine-readable formats should not inadvertently restrict customer choice
- The proposal for an independent authority should respect Member States' data policies and national access regimes, and make use of existing resources

1 Context and proposed legislation

On 12 December 2011 the Commission published a Proposal to amend the PSI Directive, which was transmitted to the Council and Parliament under the ordinary legislative procedure. The Proposal includes four main changes that are of interest to EuroGeographics and its members, and this Briefing Paper provides comments on each of them:

- *A general principle that all documents, as defined in the Directive, can be re-used for any purpose*
- *A general rule that public bodies should not charge more than marginal costs except where specifically justified*
- *A requirement to provide data in machine-readable formats*
- *The introduction of a regulatory authority in each Member State*

The European Parliament has started its first reading on the amending proposal and Mr. Ivailo Kalfin, rapporteur in the industry (ITRE) committee of the Parliament, is expected to present his draft report on 11 July 2012. In Council the Proposal is being considered by the Telecommunications Working Party and the Danish Presidency has prepared a series of compromise texts towards an orientation debate at the Telecommunications Council on 8 June.

In this paper, reference to the Presidency compromise text is to DS1315/12 of 30 April 2012.

2 General principle

The existing Directive applies “where the re-use of documents held by public sector bodies is allowed”; it is therefore not mandatory under the current rules to make any particular document available for re-use.

The Proposal now states that, “...Member States shall ensure that documents [held by public sector bodies] shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV”.

The Commission has used the phrase “generally accessible documents” to describe what is covered by the Directive, but the Proposal as drafted potentially brings within scope documents and data used in internal processes. This could have a significant cost effect with impact on the sustainability of EuroGeographics’ members and other public bodies in respect of information that they make available for re-use.

The principle that all generally accessible information should be available for re-use is accepted, but “generally accessible” should be defined unambiguously in the Directive to avoid misunderstanding. Documents and data used in internal processes should not automatically be included.

The Presidency’s current compromise text would exclude “documents access to which is restricted by virtue of the access regimes in the Member States, including cases whereby citizens or companies have to prove a particular interest to obtain access to documents ...” An amendment along these lines may produce a workable outcome, providing clarity while respecting Member States’ access regimes.

3 Principles Governing Charging

The existing Directive allows for a full range of possibilities, from free of charge to allowing public bodies to charge for re-use of information up to a ceiling defined by costs plus a reasonable return on investment. The Commission’s Proposal is more restrictive: “Where charges are made for the re-use of documents, the total amount charged by public sector bodies shall be limited to the marginal costs incurred for their reproduction and dissemination”. Nevertheless, “In exceptional cases, in particular where public bodies generate a substantial part of their operating costs relating to the performance of their public service tasks from the exploitation of their intellectual property rights, public sector bodies may be allowed to charge for the re-use of documents over and above the marginal costs, according to objective, transparent and verifiable criteria, provided this is in the public interest and subject to the approval of the independent authority ...”

For the sustainable supply of properly maintained information for re-use, we believe that EuroGeographics’ members and other information holders should have available the full range of charging mechanisms currently allowed by EU laws. This means from free of charge to full cost recovery plus a reasonable return on investment. While the Proposal aims to achieve this, we suggest a much simpler formulation, avoiding complexity, based on the Presidency compromise text:

(Article 6.2) “Paragraph 1 shall not apply to the following:

(a) Public sector bodies that are required to generate revenue to cover a substantial part of their costs”

We believe this is a straightforward and workable solution that provides clarity and avoids costly bureaucracy. We have not included the phrase “relating to the performance of their public tasks” because the Directive applies only to activity falling within the scope of the public task. In practice costs are often common to public task and other activity, so the distinction might not be helpful or workable.

4 Data formats

The current Directive requires public bodies to make their information available "through electronic means" where possible. The Proposal changes this to "in machine-readable format and together with their metadata". Machine-readable is defined as meaning that "digital documents are sufficiently structured for software applications to identify reliably individual statements of fact and their internal structure".

The Commission aims to facilitate re-use by ensuring that datasets are provided in formats that allow easy interrogation by information systems and ready combination with other data. Though a sensible development and essentially a technical measure, this change could have an impact on data availability and customer needs. For example raster data files, wanted by users for convenience and often re-used in web map services, would not fit the Proposal's definition of machine-readable.

The Presidency compromise text makes it clear that machine-readable data is required only where "possible and appropriate", to which we would add "practicable":

"Public sector bodies shall make their documents available in any pre-existing format or language and, where possible, practicable and appropriate, in machine readable format ..."

5 Member State Independent Authorities

The Proposal would require each Member State to appoint an independent authority. The means of redress in the event of a refusal to grant re-use "include the possibility of review by an independent authority that is vested with specific regulatory powers ... and whose decisions are binding upon the public sector body concerned". Under the Commission's Proposal the authority would also decide if the public body can charge more than marginal costs by exception to the general rule.

Neither the form of this authority nor its remit is specified in detail. Consequently, Member States' transposition of the new Directive will take on a particular significance in this regard. We believe that the authority should fully respect the Member State's existing data and access policies when overseeing the application of the rules. Where possible existing bodies within Member States should be used, to avoid unnecessary bureaucracy and duplication of costs.

The Presidency compromise text recognises these issues and offers a pragmatic solution, proposing an "impartial body" rather than "independent authority" and suggesting that an existing Member State body, or a combination of them, may take on these tasks.

For further information or discussion please contact:

Dave Lovell OBE FRGS CGeog
Executive Director
Tel: +32 (2) 28 88 71 75
dave.lovell@eurogeographics.org

or,

Derek Earnshaw
Representative
Tel: +44 (0) 77 3052 1187
derek.earnshaw@eurogeographics.org

About geo-information

Geo-information (also referred to as geographical or geo-spatial information), taken in its widest sense, is location information about land, sea and air. Geo-information relates to the earth's landscapes, people, places and environment. Geo-information, for example, records official names and the location of features, from points of interest (a post box) to linear features running through many countries (such as the River Danube). Geo-information provides the essential framework which allows attributes about features to be related or connected to them. This includes information about ownership, construction, environmental conditions, and the existence of essential services. Geo-information is increasingly found in everyday applications especially within our digitally enabled society and is said to be increasingly pervasive.

6 Geo- information and European policies

Geo-information has long underpinned important policies at all levels of government including, and increasingly, at the European level. An early benchmark of this underpinning was described in a European Commission document on the spatial impact of EU policies¹. Since then, geo-information, and in particular public sector geo-information (as made available by the NMCAs) has figured more prominently in EU policies and initiatives, for example; in the Communication on the European eGovernment Action Plan 2011-2015 and subsequent Council Conclusions, the Digital Agenda for Europe, the GMES Regulation and INSPIRE Directive. Geo-information is increasingly pervasive across the social, political, technological and economic arenas.

7 About the national mapping & cadastral authorities (NMCAs)

The national mapping, land registration and cadastral authorities (NMCAs), collect, produce, maintain and distribute geo-information (including topographic, cadastre and land information). Countries need geo- information that is reliable, sustainable, coherent and continuous at national level to deliver public services and underpin economic activity. Public sector geo-information has been the subject of particular attention and NMCAs, as holders of geo-information tend to have a high profile among information stakeholders, including those in their respective member states. NMCAs have paid close attention to the requirements of the Digital Agenda, the PSI Directive, INSPIRE, GMES and policy thinking in these areas.

8 About EuroGeographics

EuroGeographics, an international non-profit organization based in Brussels, is the membership association and representative body of Europe's national mapping, land registry and cadastral authorities. We currently bring together 56 definitive information authorities from 45 countries, providing a strong, unified and well-respected voice. We provide a single point of contact for communication with our members, and a platform for the exchange of information and best practice. EuroGeographics and its members are developing an infrastructure to integrate their information to deliver the definitive European Location Framework. By sharing best practice and creating standard data specifications and policies, EuroGeographics aims to ensure that members' geo-information is fully interoperable. This will contribute to Europe the quality geo-information it needs to support smart sustainable growth in support of the Europe 2020 strategy. In this way EuroGeographics is connecting you to the definitive geo-information framework for Europe.

For further information or discussion please contact:

Dave Lovell OBE FRGS CGeog
Executive Director
Tel: +32 (2) 28 88 71 75
dave.lovell@eurogeographics.org

or,

Derek Earnshaw
Representative
Tel: +44 (0) 77 3052 1187
derek.earnshaw@eurogeographics.org

¹ The Spatial Impact of European Union Policies. JRC. 2001