

EuroGeographics Briefing Paper: European Commission consultation on guidelines on recommended standard licences, datasets and charging for the re-use of public sector information

Reference: v1.0, November 2013

Main points

- We recommend that consideration be given to establishing a broad set of criteria for judging which datasets should be considered as core; these to include non-economic measures
- It will be important to ensure that core datasets are sustainably funded and maintained over the long term, in order to underpin public services and support private sector investment in re-use of public data
- We caution that the results of the consultation should not alone determine the content of guidance on licensing; this is an area where specialised legal knowledge is required and some conditions are essential to protect both data providers and re-users
- With respect to charging policy the Directive provides vital safeguards for the sustainable provision of key datasets; guidelines should respect subsidiarity and established accounting principles

1 The PSI Directive

Directive 2013/37/EU, amending the Directive 2003/98/EC on Re-use of Public Sector Information, was adopted on 26 June 2013. Member States have until July 2015 to transpose the Directive into their national rules.

Recital 36 of the amending Directive makes provision for the Commission to issue guidelines:

The Commission should assist the Member States in implementing this Directive in a consistent way by issuing guidelines, particularly on recommended standard licences, datasets and charging for the re-use of documents, after consulting interested parties.

2 The consultation process

The European Commission has begun the process of consulting interested parties with the publication of an online public questionnaire. The consultation runs from 30 August to 22 November 2013 and is found at

<http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=PSIguidelines>.

The stated objective of the consultation is 'to seek the views of stakeholders on specific issues to be addressed in the 3 sets of guidelines'. Citizens and organisations are invited to



contribute to the consultation but contributions are particularly sought from re-users of public sector information (entrepreneurs, individuals), public sector bodies and data re-use experts.

As an organisation representing public sector bodies that provide authoritative geo-information for re-use, EuroGeographics is keen to contribute to the formulation of the guidelines. We have found it difficult to respond directly to the questions posed in the consultation questionnaire, so we offer this paper as a discussion of the issues.

We look forward to further engagement with the Commission during subsequent stages of the consultation process.

3 General remarks

The consultation is aimed at stimulating responses from a wide range of people and organisations. This has entailed the use of simple language, which does not always reflect the complexity of the issues and in some places may be open to different interpretations. The results of the consultation should therefore be treated with caution and particular attention must be paid to differences among groups of respondents.

4 Recommended datasets

The questions here ask about 'core datasets'. The characteristics of such datasets are not defined in the Directive, nor in the G8 Open Data Charter. Respondents to the consultation are therefore invited, in effect, to help formulate a definition based on a suggested list of characteristics. The responses will be interesting but should be tempered with expert opinion.

Question 2.3 asks respondents to rank the characteristics that should be used to identify core datasets to be released with the highest priority. Only two suggestions are provided: high value for commercial re-use and high value for non-commercial re-use. Putting to one side the issue that the criteria for assessing value in these two cases may be very different, we wonder why these options were chosen?

We recommend a broader set of criteria for identifying priority datasets, including non-economic factors. A starting point might be the list set out by the UK Government in its response to the Shakespeare Review of Public Sector Information:

- Economic growth
- Social growth
- Effective public services
- Connective reference data

Question 2.5 asks respondents to indicate which are core datasets from a list. We must point out that this is inevitably a list of data *themes*, not datasets; the particular core datasets will vary from one Member State to another. It is probable that all of these themes will include datasets that should be considered 'core' in some circumstances, and some themes will encompass more than one core dataset in each Member State.

In summary we believe a more sophisticated set of criteria, including non-economic measures, is needed for judging which datasets should be considered as core and what benefits may be expected to accrue.

5 Licensing

Question 3.1 asks respondents which of a limited range of licensing options is preferable in default cases. It might have been better to ask, 'Which would *you* prefer?' since different



groups of respondents will have their own perspectives and often will not be in a position to evaluate what is preferable in terms of overall welfare.

The Commission favours the least restrictive re-use regime possible in order to maximise re-use, and many stakeholders will share that view; consequently when answering Question 3.3, which asks which conditions would comply with this aim, respondents are likely to baulk at any and all conditions. Nevertheless it is important to appreciate that some conditions may be necessary for the protection of the data provider and the re-user alike. Typically an open data licence will set out clearly the ownership of intellectual property rights in the data, provide clarity about liability and ensure that re-users do not make unjustified claims about the provenance of the data. This last point is often accommodated by requiring attribution of source.

Question 3.5 asks if there are any conditions that should be considered 'black-listed' or 'hardcore' in default cases. The language used here is unusual and it will be difficult to ascertain whether respondents have interpreted its meaning consistently. If the question is whether there are *any* licensing conditions that should always be considered unacceptable the answer must surely be yes, since there is no limit to the range of possible conditions that may be devised.

The same question is asked (at 3.8) in respect of 'exceptional re-use cases'. It is not at all clear what is meant by 'exceptional' in this context. The consolidated Directive uses the word 'exception' in only two ways: the exception to the marginal cost rule for documents in respect of which the public sector body is required to cover costs, and the exceptions to the prohibition of exclusive arrangements. Again it will be difficult to know whether respondents have interpreted the word consistently.

Question 3.11 asks whether existing supranational or national licensing models can be used as the basis for achieving interoperability at EU level. EuroGeographics does not want to express a view, except to say that in the case of geospatial data we suggest that the Specific INSPIRE Licence Template for spatial data sets could be a useful starting point.

In summary, we caution that the results of the consultation should not alone determine the content of guidance on licensing; this is an area where specialised legal knowledge is required and some conditions are essential to protect both data providers and re-users.

6 Charging

Question 4.1 invites respondents to devise their own definition of the marginal cost of reproduction, provision and dissemination. Since marginal cost is a standard accounting term there is no need for the Commission to open a debate on its meaning. Marginal cost is the change in cost that arises when the quantity produced changes by one unit, i.e. the cost of producing one additional unit - limited in this case to costs related to reproduction, provision and dissemination. To the extent that there may be questions about long-run and short-run marginal costs, answers should be sought by reference to accounting standards and practice as applied in the Member States.

Similar considerations apply to calculations of the full cost of collection, production, reproduction and dissemination (Question 4.3).

We are unsure how to respond to Question 4.5 - '*At what level should Public Sector Bodies calculate their charges for re-use?*' - since charges (as distinct from costs) are always calculated at the level of a product or service. If the question is about the calculation of costs, we would simply note that practical accounting constraints mean that cost calculations become less meaningful and less useful at higher levels of granularity.



The responses to Question 4.7, which asks what respondents consider a reasonable return on investment, should not be reflected in Commission guidance on charging. The Directive uses the word 'reasonable' for good reason; circumstances vary from time to time, from organisation to organisation and from Member State to Member State. Consequently the figure to use in any particular case must be left to the Member State in question. For Member States outside the Eurozone it would be particularly inappropriate to base it on the ECB rate.

In summary, the guidelines on charging should not go beyond the Directive, which provides essential safeguards for the sustainable provision of core datasets and protects subsidiarity.

Please see next page for some background about geo-information, EuroGeographics and its Members – the Geodetic, Cadastre, Land-Registry & Mapping Authorities of Europe.



Connecting you to the authoritative geo-information framework for Europe

About geo-information

Geo-information (also called 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. It is this information that allows so many features to be geo-referenced.

About EuroGeographics and its members - the national mapping & cadastral authorities of Europe (NMCAs)

EuroGeographics is an international not-for-profit organization, the representative body and membership association for the National Mapping, Land Registry and Cadastral Authorities of Europe. We bring together 59 members from 46 countries.

EuroGeographics' members invest around €1.5 billion in the development of geo-information each year and use cutting-edge technology to create, manage, maintain and make available authoritative national databases. Together, we are developing an infrastructure to integrate their national data – including topographic and land information – to deliver the definitive European Location Framework for a wide range of uses.

By sharing best practice and creating standard data specifications and policies, EuroGeographics aims to ensure that members' individual geo-information databases are compatible and can interact with one another. This will provide Europe with the high quality official geo-information it needs to develop policies and legislation for the environment, business competitiveness, public services, legal systems, security and more.

To see our members' geographical information in action, please visit our showcase at www.youtube.com/eurogeographics

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