

EuroGeographics Information Paper: Commission Proposal for recasting of the Directive on Re-use of Public Sector Information

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- **The PSI Directive embodies principles of fair, transparent, consistent and non-discriminatory access to public-sector information**
- **Given the impact of technology on all sectors of the European Data Economy, review of the legislation is needed to ensure that it continues to meet the needs of data users**
- **Geospatial authoritative information underpins public-sector information, enabling further and faster development of technologies and services based on location. Securing access to this high-quality resource is vital.**
- **The Commission's Proposal is welcome, but it would benefit from greater precision in some areas in order to provide certainty about users' rights and the impacts of the new provisions on the functioning of public-sector bodies**

1 Purpose

This paper is EuroGeographics' contribution to legislative debate following the publication of the European Commission's Proposal to recast the PSI Directive. We aim to identify issues that, in our view, warrant discussion in Parliament and Council in order to arrive at a clear and workable Directive.

2 Context

The members of EuroGeographics are national mapping, cadastral and land registration authorities (NMCAs). One of their basic duties is to provide official mapping and geospatial information for use and re-use by government, businesses and citizens. Network externality benefits are gained when everyone uses the same authoritative information, boosting efficiency and effectiveness in a huge range of economic activities.

NMCAs actively promote the re-use of the information they provide in the wider public interest and over time have created a well-established ecosystem of inter-related uses and users. Technology continues to present new opportunities at a burgeoning rate and geographical location underpins many such developments: for example smart cities or autonomous vehicles, the success of which is completely dependent on precise and reliable data.

3 Expected impacts of the Proposal on EuroGeographics members

EuroGeographics members have been working with the PSI Directive since its inception. The principles of fair, transparent, consistent and non-discriminatory access to public-sector information for re-use are now well established and the Directive has been found to work well



in practice. Amendments made in 2013 have yet to reach their full impact, but few problems have arisen so far.

We acknowledge that further improvements can be made in the light of experience and to take into account rapid technological developments in the intervening years. We will work with other stakeholders to strengthen the legislative framework in a way that is both proportionate and cost-effective.

Each of the changes highlighted below has the potential to affect some, if not all, national mapping, land registries and cadastral agencies – but in some places the full implications are not clear from the text. We aim to encourage debate with a view to achieving clarity and predictability of outcome in the final form of the Directive.

Article 13 – High-value datasets

The Proposal empowers the Commission to adopt a list of high-value datasets which must be made available free of charge under conditions compatible with open licences, thus overriding the provisions on charging elsewhere in the Directive. This is a substantial step in the direction of public open data, with potential implications for the viability of some public-sector bodies. It therefore warrants close examination during the legislative procedure.

The list of high-value datasets is to be set out in a delegated act under Article 290 TFEU. Consequently it is difficult to make a full or realistic assessment of the impact on our members. The Commission's Impact Assessment refers to the list of high-value information in the appendix to the G8 Open Data Charter, where geospatial data is mentioned explicitly and includes topography, postcodes, national maps and local maps. Furthermore Article 1(6) of the recast Directive affirms that it applies to the subject matter of the INSPIRE Directive (2007/2/EC), which sets out the framework of a European Spatial Data Infrastructure. Therefore, there are clear indications that geospatial data, of the type provided by national mapping, land registries and cadastral agencies, will be included in the list.

Depending on the ambition of the delegated act, the availability at no cost of high-value datasets that previously may have attracted charges has the potential to disrupt markets established by those NMCA's that have evolved a funding model reliant on commercial activities. The Commission has acknowledged this risk and Article 13(3) provides that free availability may not apply if the Commission's own impact assessment indicates that considerable distortion of competition may result.

In Article 13 the European Parliament and Council are being asked to make an open-ended commitment to open data on behalf of the Member States, and both institutions may wish to consider whether the scope of Article 13, and/or the mechanism of its implementation, should be set out more precisely prior to the adoption of the Directive. This will enable the impact of this proposal to be properly understood, assessed and appropriate steps taken to ensure that the value of such datasets is sustained in the long term.

Article 6 – Charges for re-use

Notwithstanding the provisions of Article 13, the Proposal preserves the general rule that charges for re-use are limited to the marginal costs of reproduction, provision and dissemination. This approach has proved workable in practice.

An exception is retained for public-sector bodies that are required to generate revenue to cover a substantial part of the costs relating to their public task. As now, the total income from supply and re-use is limited to specified costs plus a reasonable return on investment. But Article 2(13) now places a limit on 'reasonable return on investment', at five percentage points above the fixed interest rate of the European Central Bank. We note that there are varying economic circumstances in European member states, and therefore different economic environments within which public-sector bodies operate, especially those that remain outside the Eurozone. It is unclear why 5% has been chosen, and it may appear to some as arbitrary and should be justified before being introduced. It is also noted that no such limit is imposed on commercial entities operating within Member States, nor on those successfully responding to the procurement of goods or services for the Commission. It is unclear whether such a blanket limit is appropriate, given these factors.

The Proposal also deletes the exception at Article 6(2)b of the current Directive, which permits public-sector bodies to charge above the level of marginal costs for re-use of particular documents in respect of which they are required to generate revenue to cover a substantial part of the costs (of collection, production, reproduction and dissemination). The existing exception is, in our view, key to ensuring the availability for re-use of documents that otherwise might not see the light of day at all, but for which a real demand has nonetheless been demonstrated. Removal of the exception may have the effect of reducing the availability of information for re-use, including some information currently provided by national mapping and cadastral agencies.

Article 5(4) – Dynamic data

This provision would require public-sector bodies and public undertakings to make dynamic data available for re-use immediately after collection, via suitable APIs (Application Programming Interfaces).

The new term 'dynamic data' is defined in Article 2(6) as 'documents in a digital form, subject to frequent or real-time updates'. Recital 27 gives examples of dynamic data - traffic data, satellite data and weather data – and explains that the economic value of such data depends on the immediate availability of the information and of regular updates. This is clear, but the wording of Article 2(6) fails to distinguish between the frequency of update and the rate of change of the underlying reality. A national mapping or cadastral agency may make many thousands of updates to its databases daily, but the timing of those updates may be considerably divorced from the real-world change that they reflect. We do not believe such data is 'dynamic' in the sense given by Recital 27. It would be helpful to clarify the wording of the article to focus on the frequency of real-world change rather than the frequency of update of digital documents.

Paragraph 5 of Article 5 makes allowance for cases where the public body has insufficient resources to make documents available immediately, but it does so by extending the timeframe for availability. If the economic benefit truly hinges on immediate availability this would result in sub-optimal outcomes, and it might be better to consider whether increased funding would be of economic benefit in such instances.

Article 1(5) – Exercise of the sui generis right (Database Directive 96/9/EC)

The Proposal aims to 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'. We note that the Commission has deemed it unnecessary to



amend the Database Directive itself, yet this proposal attempts to change the way it operates. We do not think the proposition works. Public-sector bodies would still be able to claim the sui generis right in appropriate circumstances, and this is important because it allows them to license re-use of their data in much the same way as if the material were covered by copyright. The likelihood of a successful challenge under Article 1(5) of a recast PSI Directive would depend on an interpretation of the intentions of the public body concerned in a given case, rather than the effect of its action, and this could present unnecessary legal complications.

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.

4 About EuroGeographics

EuroGeographics, an international non-profit organisation based in Brussels, is the membership association and representative body of the European National Mapping, Cadastre and Land Registry Authorities. We currently bring together 63 organisations from 46 countries, delivering benefits for each regardless of the geographical, technical, political, organisational, linguistic and business parameters in which they work.

By providing a single point of contact, the Association's main activities focus on representing members' interests.

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