

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

(EG 2018/0110/LT, 26.09.2018 Brussels)

- We welcome the Commission's Proposal, which represents a step forward in expanding the re-use of public-sector information as part of the European data economy.
- EuroGeographics is anxious to avert unintended consequences that could obstruct the long-term availability of high-quality, up-to-date authoritative geospatial public sector information for re-use.
- EuroGeographics members, the national mapping and cadastral agencies of Europe, have been working with the PSI Directive since its inception. They have actively promoted 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.
- 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.

1 Purpose

This paper is EuroGeographics' third contribution to the review of the PSI Directive. We welcome the Commission's Proposal, which represents a step forward in expanding the re-use of public-sector information as part of the European Data Economy. We believe it will benefit all EU citizens. As in our previous paper of June 2018, we aim to identify those 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 core duties is to provide official mapping and geospatial information for use by government, businesses and citizens. Both the economy and citizens benefit when everyone uses the same authoritative, or authentic, 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 and geographical location underpins many of these; examples being smart cities or autonomous vehicles, the success of which is completely dependent on reliable information about location.

3 Impact of the proposal on re-use of authoritative geospatial information

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. We recognise that further improvements can be made in the light of experience, and to take into account rapid technological developments in the intervening years. We welcome the opportunity to work with our stakeholders to update and improve the legislative framework in a way that is both proportionate and cost-effective and contributes to the wider public good.

We have taken soundings from our members on the likely impact of the recast Directive on their current ways of working. A sizeable proportion of our members – around a third – believe that the proposed changes could have a substantial or dramatic impact on their existing economic model, necessitating major change or a complete reconfiguring of their activities. EuroGeographics is anxious to avert unintended consequences that could obstruct the long-term availability of high-quality, up-to-date authoritative geospatial public sector information for re-use.

With this in mind, we encourage debate in Parliament and Council with a view to ensuring maximum benefit from the Directive and minimising disruption at Member State level.

Article 13 – High-value datasets

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. This is a substantial step in the direction of public open data, and it overrides the provisions on charging in Article 6 of the Directive. We are concerned that this could adversely affect the sustainability of the provision of public sector information if alternative funding is not secured from those allowed by Article 6.2(a). 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. Thus there are clear indications that geospatial data, of the type provided by national mapping, land registry and cadastral agencies, will be included in the list. The national mapping and cadastral agencies of Europe already have a long and proud record of promoting re-use of authoritative geospatial information, whether as open data or paid for by users, which needs to be sustainable for the long term.

Depending on the ambition of the delegated act, the availability at no cost of high-value datasets that previously may have attracted charges could undermine the economic viability of continued provision of public-sector information from NMCA's. It could also disrupt markets established by those NMCA's that have evolved a funding model that relies on revenue from business users. 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.

Nevertheless, the delegation in Article 13 grants the Commission very wide powers with little direct influence either by the European Parliament or the Member States who will have to provide replacement funding in cases where, up to now, high-value datasets have been self-funding. It overrides the principles relating to charging as set out in Article 6, and in this respect a delegated act could be said to amend essential elements of the Directive.

For these reasons we believe Article 13 should provide for implementing acts rather than a delegation. A committee of Member State experts would thus play an active role in deciding the list of high-value datasets. This would enable the impact to be fully assessed and appropriate steps taken to ensure that the provision and value of such datasets is sustained in the long term.

Article 6 – Charges for re-use

Notwithstanding the provisions of Chapter V, the Proposal reasserts the general principle that charges for re-use are limited to the marginal costs of reproduction, provision and dissemination. The exception at Article 6.2(a) of the current Directive is retained, to protect public-sector bodies that are required to generate revenue to cover a substantial part of the costs relating to their public task. This approach has proved workable in practice but it may be undermined by the provisions of Chapter V.

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. 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 could have the unintended effect of reducing the availability of information for re-use in some cases, including some information currently provided by national mapping and cadastral agencies. We therefore recommend that the exception be retained.

Article 5(4) – Dynamic data

The formal definition of dynamic data at Article 2(6) focuses on the frequency of data update rather than the rate of change of the phenomena being measured, which is what really characterises dynamic data. Our members' data is not 'dynamic' in this sense – they collect data about real world phenomena that are relatively static, but their databases may



be frequently updated. The definition 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.

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 do not believe that EuroGeographics members have ever misused the sui generis right in this way. 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 need the sui generis right because it allows them to license re-use of their data in much the same way as if the material were covered by copyright. A challenge under Article 1(5) of a recast PSI Directive would depend for its success on an interpretation of the intention of the public body concerned in a given case, leading to needless legal uncertainty.

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 more than 40 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 is on representing members' interests.

For further information or discussion please contact:

Dominik Kopczewski

Policy Manager

Tel: + 48 601 364 718

dominik.kopczewski@eurogeographics.org

EuroGeographics is an AISBL / IVZW under Belgian Law.

Registered Office: EuroGeographics, rue du Nord 76 noordstraat 1000 Brussels. <http://www.eurogeographics.org>

BCE registration: 833 607 112 - VAT number: BE0833.607.112