

The background of the slide is an aerial photograph of a city street intersection. The image is divided into several sections by white lines. A large, semi-transparent dark rectangle covers the left side, containing the title text. On the right side, a white geometric pattern of interconnected lines is overlaid on the image, resembling a network or a stylized map. The aerial view shows buildings with red-tiled roofs, streets with cars, and some green spaces.

# Re-use of public-sector information: what next?



## What I'd like to cover:

- Why the PSI and Database Directives are important to us
- Why the directives have been reviewed
- How the European Commission has consulted
- EuroGeographics' contribution to date
- Commission's conclusions
- Proposed changes to the PSI Directive
- Likely issues for EuroGeographics members
- Next steps in the Ordinary Legislative Procedure
- Early thoughts about how to represent members' interests

## Why are these directives important to our members?

Re-use of public-sector information  
is our business!

## 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



## The Database Directive ...

- affirms that copyright may protect the design of a database, but not the content
- creates a '*sui generis*' right which prevents unauthorised extraction or re-use of substantial parts of a database ...
- ... if the owner can demonstrate substantial investment in obtaining, verifying or presenting the data

## Together ...

**the two directives support the business models  
of members whose governments require them  
to charge for use of their data**

## Review of the PSI and Database Directives

- Routine procedure
- But now in the context of building the European Data Economy
- Long-term aim of ‘full availability’ remains
- Location data is an exemplar of PSI re-use



## Consultation by the Commission

- Public online consultation September-December 2017  
- 273 responses and 56 papers received
- Stakeholder meetings
- Public hearing 19 January 2018



# EuroGeographics response

- Response to online consultation
- Briefing paper
- Visit to DG CNECT
- Attendance at public hearing
- Visit to European Parliament (today!)



## 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

## Database Directive - conclusions

- It works OK as a tool for harmonising database protection across EU
- No real evidence that the *sui generis* right has stimulated investment ...
- ... but it provides an extra layer of protection against unauthorised use by third parties
- Some concern that public bodies might use the *sui generis* right to prevent re-use
- Reform at this stage would be disproportionate

## PSI Directive – re-use issues to be addressed

- 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**



## A reminder of what is covered by the PSI Directive

- ‘Documents’ created as part of public task,
- where a document is any content, or part of such content, whatever its medium
- (therefore content in digital form and audiovisual recordings)
- Right of re-use depends on right of access

Three-part test:

- Is it a Document?
- Is it publicly accessible?
- Was it created as part of the public task?

# Transport and utility operators

## Issue

Data held by public undertakings in the transport and utilities sector has considerable potential for re-use, but these bodies have previously not been covered by the PSI Directive

## Commission Proposal

Extend scope to encompass public undertakings in the transport and utilities sector, while allowing them to decide what to make available for re-use and at what price

# Research data

## Issue

The PSI Directive exempts documents held by educational and research establishments, but it is important that the results of research be made readily available for re-use

## Commission Proposal

Require Member States to develop policies for open access to data resulting from publicly-funded research

Research data covered by open-access mandates will be covered by the PSI Directive

Research published in journals continues to be exempt



# 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 given in the text 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

# Exclusive arrangements

## Issue

The existing rules prohibit exclusive agreements between public-sector bodies and private companies, but the first company to secure an agreement may gain an advantage even if the same arrangements are subsequently made available to others

## Commission Proposal

Increase transparency by publishing agreements two months before they come into effect

This will also apply to agreements that could reasonably be expected to lead to restricted availability

# 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'





# 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

## Article 13 – a 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?



## What happens next?

- European Parliament delegates to Committee
- European Parliament Committee appoints Rapporteur
- Rapporteur drafts report, in consultation with Shadow Rapporteurs
- Committee members submit their own amendments
- Committee votes
- Plenary votes (on new amendments and substantive motion).
- European Council delegates to Working Party
- Council considers EP amendments ...

## Some issues to consider

- Seems very probable that some geospatial data will feature in the ‘high-value’ list
- First challenge: alert stakeholders so the Proposal doesn’t go through without proper scrutiny
- Article 13 needs debate – what would be a good outcome?
- Timing – can it be adopted before the end of the current Parliament in May 2019?
- Always easier to influence early in the process – e.g. raising issues with Rapporteur before her report is written. Last-minute plenary amendments are a last resort (and require support).
- And finally:
- It’s no good having a rock-solid case if no-one is listening!

