

Recasting the Directive on re-use of public-sector information



What I'd like to cover:

- Why the PSI Directive is important to us
- EuroGeographics' contribution to date
- Proposed changes to the PSI Directive
- Issues for EuroGeographics members
- Next steps

Why is the directive important to our members?

**RE-USE OF PUBLIC-SECTOR INFORMATION
IS OUR BUSINESS!**

The PSI Directive ...

- sets an expectation that information that is publicly accessible should be available for re-use;
- ensures a level playing field for re-users of public sector information;
- 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

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 includes content in digital form and audiovisual recordings)
- Right of re-use depends on first having right of access

Three-part test:

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

EuroGeographics actions before the Proposal was published

- Response to online consultation
- Briefing Paper
- Visit to Head of Unit at DG CNECT
- Attendance at Commission workshop
- Fact-finding visit to European Parliament



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/pmn/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



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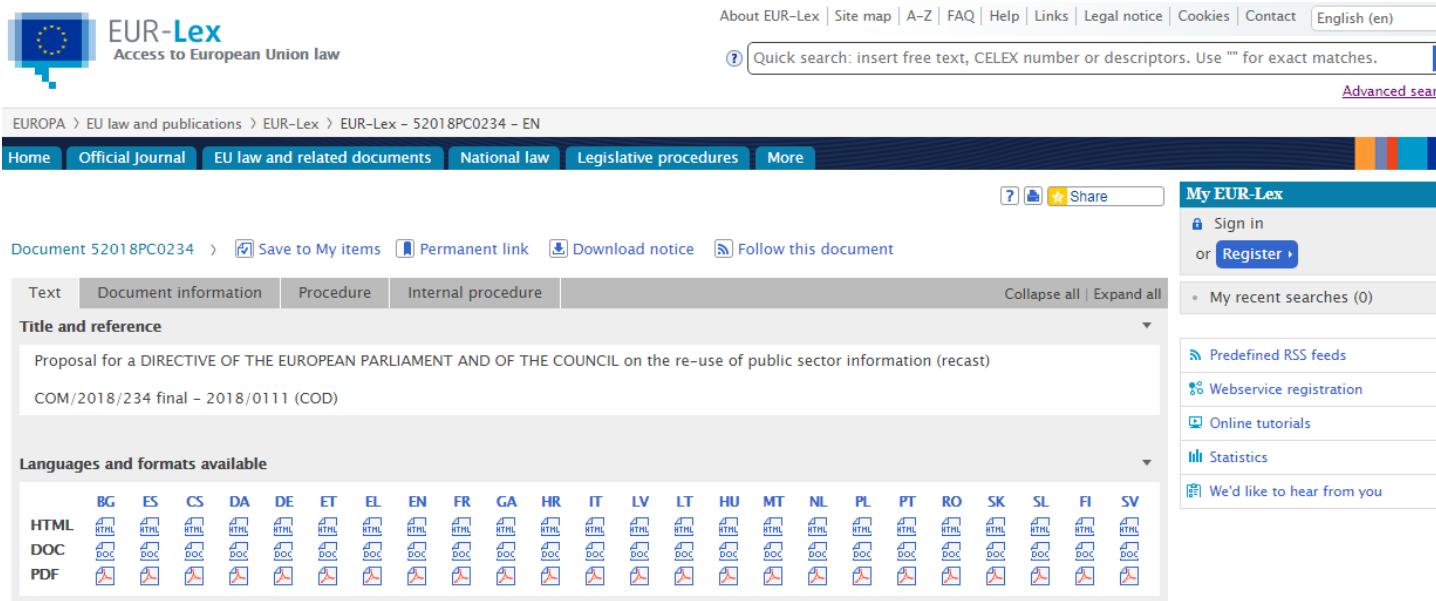
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Proposal for a ‘recast’ directive

Published and sent to Parliament and Council on 25 April 2018

Find it (in all EU languages) here:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A234%3AFIN>



The screenshot shows the EUR-Lex website interface. At the top, there is a navigation bar with links to 'About EUR-Lex', 'Site map', 'A-Z', 'FAQ', 'Help', 'Links', 'Legal notice', 'Cookies', and 'Contact'. A language selector for 'English (en)' is also present. Below the navigation bar is a search bar with the placeholder 'Quick search: insert free text, CELEX number or descriptors. Use "" for exact matches.' and a 'Search' button. To the right of the search bar is a link to 'Advanced search'. The main content area shows the document details for 'Document 52018PC0234'. The title is 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the re-use of public sector information (recast)'. The document identifier is 'COM/2018/234 final - 2018/0111 (COD)'. Below the title, there is a section titled 'Languages and formats available' with links to various language versions (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV) and download options (HTML, DOC, PDF). To the right of the document details is a sidebar titled 'My EUR-Lex' with links to 'Sign in' or 'Register', 'My recent searches (0)', 'Predefined RSS feeds', 'Webservice registration', 'Online tutorials', 'Statistics', and a feedback link 'We'd like to hear from you'.

PSI Directive – issues addressed by the proposal

- Availability of data held by utilities and transport operators
- Availability of publicly-funded 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)

Four key areas of concern to members

Article 13: High-value datasets

Article 6: Charges for re-use

Article 5(4): Dynamic data

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

Article 13: High-value datasets

Problem

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 of charge** via APIs

(May not be free if Commission's impact assessment indicates distortion of competition)

Issues

- Overrides Member States' access rules
- Overrides charging provisions elsewhere in the Directive
- Could threaten viability of some members' existing business models

Evaluation of ‘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

Do they mean us?

- Concept of high-value data is based on the G8 Open Data Charter published in 2013
- High-value data categories are listed in the technical annex
- Explicitly includes Geospatial Information; for example topography, postcodes, national maps, local maps
- Do they mean all scales/resolutions? They usually do!

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?
- Should it be an implementing act instead, to give Member States more control?

Article 6: Charges for re-use

Problem

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'

Issues

- Some members may be prevented from covering costs of some products
- Is it fair or reasonable to impose a flat limit on return on investment?

Article 5(4): Dynamic data

Problem

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

Issues

- Dynamic data is defined by frequency of update rather than frequency of real-world change
- Not clear whether members' data would be categorised as dynamic

Article 1(5): Exercise of the *sui generis* right

Problem

The Commission believes, on the basis of its consultations, that public sector bodies sometimes use the *sui generis* right of the Database Directive to prevent or restrict re-use of information in databases

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 ...
 - ... provided that the owner can demonstrate substantial investment in obtaining, verifying or presenting the data
 - thus protecting the licensing of database content

Article 1(5): Exercise of the *sui generis* right

Problem

The Commission believes, on the basis of its consultations, that public sector bodies may use the *sui generis* right to prevent or restrict re-use of information in databases

Commission Proposal

Insert new clause in the PSI Directive to stop public-sector bodies exercising the *sui generis* right to prevent or restrict re-use

Issues

- Public-sector bodies depend on the protection afforded by the *sui generis* right to license re-use of their data
- Successful challenge depends on judgment about intentions of public-sector bodies
- Modifies one directive using another

What's happened since the proposal - Parliament

- Dossier assigned to ITRE Committee (Industry, Research & Energy)
- Rapporteur: Neoklis SYLIKIOTIS - GUE/NGL (Cyprus)
- Committees for opinion:
 - IMCO (Internal Market & Consumer Protection)
 - CULT (Culture & Education)
 - LIBE (Civil Liberties, Justice & Home Affairs)
- Initial exchange of views in IMCO (Tuesday this week)

What's happened since the proposal - Council

- Dossier assigned to the Working Party on Telecommunications and Information Society
- Ministers discussed in Telecoms Council on 8 June
 - All Member States supported the proposal
 - UK questioned potential costs of free re-use of high-value datasets
 - Belgium suggested renaming - to the Open Data Directive

EuroGeographics actions since the Proposal was published

- Detailed analysis of the proposal
- Heightened monitoring of EP and Council activity
- Information Paper published 12 June
- Initial contact with Rapporteurs and Shadow Rapporteurs
- Attendance at IMCO Committee



EuroGeographics Information Paper:
Commission Proposal for recasting of the
Directive on Re-use of Public Sector Information
(EG 2018/0043/LT – 12.06.2018, Brussels)

- 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

Provisional Timings

- Commission and Parliament want to complete the dossier before the end of this European Parliament; i.e. by mid-2019
- Implies a first reading agreement between Parliament and Council
- Autumn will be busy, with the ITRE Committee vote on the Rapporteur's report a defining moment

EuroGeographics' next steps

- Seek views from members on priorities
- Engage with Rapporteurs and Shadows
- Monitor interventions by other stakeholders
- Then ...
- Develop positions on the main issues
- Work towards a Position Paper(s)
- Suggest specific amendments where possible

What members can do

Share the EuroGeographics Information Paper

- with colleagues
- with legal advisers
- with parent department in government
- With other public-sector bodies who may be affected

Share your concerns and offer support
... keep the conversation going

Final thoughts

- First challenge: alert stakeholders so the Proposal doesn't go through without proper scrutiny
- Article 13 needs debate – is the Commission over-reaching its powers? What would be a good outcome?
- Timing – pressure to adopt the Directive before the end of the current Parliament in May 2019 could make compromises easier to achieve
- 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 from multiple MPs).
- And finally:
- It's no good having a rock-solid case if no-one is listening!
We have to 'work with the grain'

