BRIEFING

EU Legislation in Progress

European Parliament

Re-use of public sector information

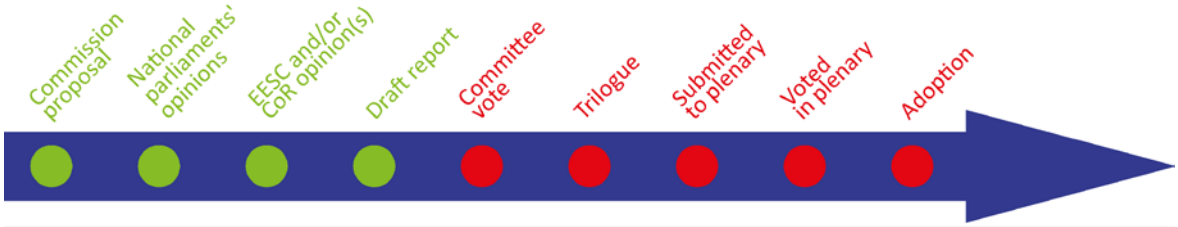
OVERVIEW

The mid-term review of the digital single market strategy in 2017 identified the data economy as one of the top three priority areas for action in the second half of the strategy's implementation, and announced a legislative proposal to improve access to and the re-use of publicly funded data. These data, which include geographical, land registry, statistical and legal information, are needed by re-users in the digital economy, and are increasingly employed by public administrations themselves.

On 25 April 2018, the European Commission adopted a proposal for a revision of the directive on the re-use of public sector information, which was presented as part of a package of measures aiming to facilitate the creation of a common data space in the EU. The directive addresses a number of issues and presents ways to boost the potential of public sector information, including the provision of real-time access to dynamic data, the supply of high-value public data for re-use, the prevention of new forms of exclusive arrangement, and action to limit the use of exceptions to the principle of charging the marginal cost.

Within the European Parliament, the file was assigned to the Committee on Industry, Research and Energy (ITRE). The draft report was published on 12 September 2018.

Proposal for a directive of the European Parliament and of the Council on the re-use of public sector information (recast)		
Committee responsible:	Industry, Research and Energy (ITRE)	COM(2018) 234 25.4.2018
Rapporteur:	Neoklis Sylikiotis (GUE/NGL, Cyprus)	2018/0111(COD)
Shadow rapporteurs:	Michał Boni (EPP, Poland) Răzvan Popa (S&D, Romania) Nikolay Barekov (ECR, Bulgaria) Morten Helveg Petersen (ALDE, Denmark) Julia Reda (Greens/EFA, Germany) Dario Tamburrano (EFDD, Italy)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
Next steps expected:	Vote in committee	



Author: Mar Negreiro
Members' Research Service
PE 628.312 – November 2018

EN

Introduction

Public sector information (PSI), such as geographical, land registry, statistical and legal information, is a valuable resource for data re-users. The re-use of open data can contribute, for example, to the growth of the European economy and the development of artificial intelligence (AI), and help to overcome societal challenges. The data economy is currently seeing exponential growth, and PSI plays an important role within that economy. The amount of machine-generated data being created is increasing at an unprecedented rate in an increasingly connected world, expected to reach over 30 billion connected devices by 2020. This increased amount of data worldwide and increased processing capacity with AI tools calls for more and more data to be made re-usable, and for the technical tools used by public administrations to be updated to enable access to and the re-use of data in real time to maximise re-use potential. Public sector data, especially big data sets, are important for the development of AI: without a steady supply of quality data, it is impossible to develop sophisticated AI devices. In addition, according to the Commission, PSI generates commercial activity, especially by small and medium-sized enterprises (SMEs), which translates into more jobs and revenue from taxes. Furthermore, the public sector is itself a key user: PSI is not only used as raw material for the production of data-based services and applications; it also brings greater efficiency to the delivery of private and public services, and better informed decision-making.

In this context, the value of the European Union's data economy was already more than €285 billion in 2015, representing over 1.94 % of EU gross domestic product (GDP). If favourable policy and legislative conditions were put in place, the European data economy could grow 18-fold, representing 4 % of EU GDP by 2020. According to a recent study, the total direct economic value of PSI is expected to increase from a baseline of €52 billion in 2018 for the EU-28, to €194 billion in 2030.

In this light, in May 2017, under the mid-term review of the digital single market strategy, the Commission identified development of the European data economy as one of its three key priority areas for further EU action in the years to come, and announced a legislative proposal to improve access to and the re-use of publically funded data.

On 25 April 2018, the European Commission adopted a proposal on the revision of the PSI rules and of the directive on the re-use of public sector information. It was presented as part of a package of measures aimed at facilitating the creation of a common data space in the EU.

Existing situation

The EU has been promoting the re-use of PSI for many years. The first PSI Directive[1] was adopted on 17 November 2003 to facilitate the re-use of PSI throughout the Union by harmonising the basic conditions for re-use and removing major barriers to re-use in the internal market. Its legal basis was Article 95 of the EC Treaty (now Article 114 of the Treaty on the Functioning of the European Union, TFEU).

Ten years after it entered into force, the PSI Directive was amended in July 2013, as part of the digital agenda for Europe initiative, by Directive 2013/37/EU with a view to encouraging Member States to make as much as possible of the material held by public sector bodies available for re-use. More specifically, the modifications introduced an obligation to allow the re-use of generally accessible public data, expanded the scope of the directive to include documents from the cultural sector (such as public libraries, museums and archives), established a default-charging rule limited to the marginal cost of reproduction, provision and dissemination of the information, and obliged public sector bodies to be more transparent about charging rules and the conditions applied.

The current PSI Directive presents a number of exceptions[2] to the rule that public sector bodies must not charge above the marginal cost of dissemination for making their datasets available. This is the

case for public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks.

It should be noted that the PSI Directive requires Member States to ensure publicly held data can be re-used for both commercial and non-commercial purposes, such as by permitting re-use in content licences and by using open standards. However, unless national law says otherwise, public sector bodies (PSB) do not have to guarantee access to data (i.e. to publish anything or let citizens access anything), and can screen each request to re-use the data they do make available. Thus the directive is neither an open data law, nor a freedom of information law.

On 17 July 2014, the Commission published guidelines to help Member States transpose the revised rules and to indicate best practice in several fields of importance for the re-use of public sector information.[3] Implementing the changes took some time in some countries,[4] but since 15 September 2017, all 28 EU Member States have implemented the rules in national legislation.

In addition, the PSI Directive relates to other EU legislation, including the General Data Protection Regulation (GDPR), the copyright legal framework review, the Database Directive review, the directive establishing an infrastructure for spatial information in the European Community (Inspire) and EU competition law. Its relationship with each of these has been analysed in a study commissioned by the European Commission to support this proposal. It will be also considered in the stakeholders' views section later in this briefing.

Parliament's starting position

The European Parliament has asked the Commission to unlock the potential of the data economy on at least four occasions in the current legislative term.

In its January 2016 resolution Towards a digital single market act, the European Parliament pointed out that a data-driven economy is key to economic growth, and emphasised the opportunities that new ICT technologies such as big data, cloud computing, the internet of things and other technologies can bring to the economy and society. It also noted that public administrations should have open government data by default and called for progress on the degree and pace of releasing information as open data, on identifying the key datasets to be made available and on promoting the re-use of open data in an open form, on account of their value for the development of innovative services, including cross-border solutions, transparency and benefits for the economy.

In its March 2016 resolution Towards a thriving data-driven economy, Parliament specifically asked the Commission to 'develop a regulatory framework to tackle the economic, technological, social and cultural challenges of a data-driven economy'. It also called for action on the following challenges: data ownership, possession, management, access and security, interoperability, data limitation and storage, restrictions on the use and re-use of data across Europe, innovative interrupters in intellectual capital, accessibility and infrastructure, transparent transport rules, cross-border mechanisms and, where applicable, the creation and dissemination of, and access to, open data, and its availability for public administrations and service providers.

In its February 2017 resolution on the European cloud initiative, Parliament argued that public administrations should have open access to government public data by default. It called for progress to be made in determining the degree and pace of releasing information as open data, in identifying key datasets to be made available and in promoting the re-use of open data in an open form.

In its May 2017 resolution on the EU eGovernment action plan 2016-2020, Parliament stressed the importance of open data and the need for safeguards to secure respect for copyright and data protection. It stated that public administrations should, as far as possible, make information available, especially when the volume of data generated is very large, as in the case of the Inspire programme. Parliament called for the speedier release of data into the public domain, better quality of data and easier access to data in machine-readable formats. It pointed out that interoperability,

open standards and open data were not only fundamental in a cross-border context but were also needed at national, regional and local administrative levels in each Member State.

Preparation of the proposal

To underpin the proposal and collect evidence, the Commission ran a public consultation online, together with five dedicated workshops and a study. These supported both the evaluation and the impact assessment accompanying the legislative proposal.

Public consultation

The public online consultation was launched by the Commission for 12 weeks (between 19 September 2017 and 16 December 2017). It received replies from 273 stakeholders, including both public sector bodies (PSBs) and commercial and non-commercial re-users. In addition, a total of 62 position papers were submitted either in addition to questionnaire answers (57) or as stand-alone contributions (5).[5] The aim of this consultation was to assess the functioning of the directive, consider the scope of the review, and reflect on policy options. On the evaluation of implementation of the 2013 directive, the vast majority of respondents (81 %) saw the clear EU added value of the PSI Directive and considered it had helped to open up more public sector data across the EU. This was not only valid at national level: 63 % believed that it had facilitated access to PSI from different countries. Next to the evaluation and positive impacts, about 64 % indicated that the PSI Directive had been conducive to the creation of an EU-wide market for products and services based on PSI.

More than half of the respondents (54 %) also agreed that PSI had become more affordable, including for start-ups and SMEs. Furthermore, about 73 % agreed that PSI was increasingly becoming a source of innovative services and products. On the down side, respondents pointed out the problem of slow and costly redress procedures following rejected requests for re-use and the limited circulation of PSI across the EU. To the question of whether PSI circulated freely in the EU and was easy to re-use for cross-border applications, only about 35 % of respondents provided positive feedback, while about half (51 %) gave a negative response, believing that barriers to the free and easy re-use of PSI in the EU still existed. For instance, two-thirds considered that the wide variety of licences and re-use conditions continued to be a barrier to the efficient and effective re-use of PSI.

On the questions relating to the current review of the directive, there was agreement that more effort was needed to address technical challenges, such as improved interoperability, standards and application programming interfaces (APIs). However, there was no clear consensus[6] on whether to keep the exceptions on the current default rule for charging only for marginal costs of dissemination for the re-use of PSI. On increasing the scope of the directive, a large majority was in favour of opening up publicly funded scientific research results (publications and research data) for re-use. There was strong support for making data generated in the context of a predominantly publicly funded public task available for re-use, irrespective of the private or public nature of the entity providing the service. In this sense, only 23 % considered that data generated in the context of the provision of a public task by publicly-owned companies or by independent economic operators were currently available for re-use.

Support study and evaluation

Article 13 of the directive calls on the European Commission to carry out a review of the application of the directive and to communicate the results, together with any proposal for amendments, before 18 July 2018. The review was carried out by the Commission and resulted in the publication of an evaluation report. The evaluation includes all EU Member States and covers the period starting from the directive's transposition deadline (July 2015) to January 2018. In line with the better regulation guidelines, the evaluation assessed the criteria of effectiveness, efficiency, coherence, relevance and EU added value of the intervention. It also assessed the economic, social and environmental impacts

of the intervention. The evaluation aimed to identify opportunities to reduce regulatory costs and to simplify the existing legislation without negatively affecting the achievement of the underlying policy goals.

The evaluation report concludes that the PSI Directive works well, as it continues to support the digital content market for PSI-based products and services, to stimulate cross-border exploitation of PSI, and to prevent distortions of competition on the EU market. It finds that the changes introduced in 2013 have resulted in a significant decrease in the number of exclusive agreements for the re-use of data. At the same time, it has had a favourable impact on transparency, citizen empowerment, and public sector efficiency. It argues that even though the PSI Directive creates a certain number of obligations for PSBs, it does not impose a disproportionate burden on them.

According to the analysis, the total economic value of PSI is expected to have been around €140 billion in 2010. It is estimated that this value increased in linear fashion to roughly €220 billion in 2017. This is an increase of €80 billion, i.e. 57 % compared to 2010. In contrast, the costs associated with opening up PSI were estimated at around €9.3 billion in 2017. Moreover, the number of data companies increased from around 129 000 in 2013 to 134 000 in 2016.

Re-users, on the other hand, have benefited from substantial simplification of the procedures for obtaining PSI access, which has helped them save time and money. The PSI Directive has already helped to make enormous progress on reducing the cost of data for re-users. However, the most valuable datasets (e.g. geo-spatial, business registers, financial data) are still often charged for. The existence of 'locked data' prevents the PSI market from reaching its full potential and also prevents the development of new services and products. Several PSBs continue to charge well above what is needed to cover reproduction and dissemination costs for the re-use of public sector data. Such charges constitute a market barrier for companies, in particular for start-ups and SMEs.

However, the report also indicates that there are a number of issues that need to be addressed in order to fully exploit the potential of PSI for the European economy and society: these include the provision of real-time access to dynamic data via adequate technical means, reducing restrictions, including financial barriers, on the re-use of high-value public data, acknowledging that relevant data are often generated in the context of the provision of certain services of general economic interest by public undertakings and by publicly funded research rather than by the public sector as such, the existence of new forms of exclusive arrangements, the use of exceptions to the principle of charging the marginal cost and the relationship between the PSI Directive and certain related legal instruments. In fact, the only negative remarks concerning the PSI Directive as a whole emerged with respect to its coherence with other pieces of legislation at the EU level and especially with the Database Directive and the general intellectual property framework. The analysis highlights some contradictions between these regulatory measures. However, it also noted that as part of the digital single market strategy, the Commission is currently reviewing many of these pieces of legislation and some of these issues might be solved in the future. It also highlights that only the extension of the scope of the directive to cultural data has been less successful than expected, though it noted that this could be linked to the early stage of implementation of the legislation itself, which is only now starting to be known by cultural institutions in the Member States.

Study

The European Commission arranged an external study[7] to support the review of Directive 2003/98/EC on the re-use of public sector information. It fed both the impact assessment and the evaluation report accompanying the legislative proposal. The study used a combination of methods for data collection including interviews, desk research, workshops, online surveys and the public online consultation launched by the Commission. The data collection was made on a selected sample of 10 EU Member States: Germany, Estonia, Ireland, Greece, France, Italy, the Netherlands, Poland, Slovenia and Sweden. The analysis looked at the impacts of the PSI Directive to date and whether it was fit for purpose looking at the next 10 years, resulting in a number of recommendations, which fed into the review.

Impact assessment

An impact assessment was carried out for this legislative proposal. The following three options[8] were considered: a baseline scenario (no policy intervention) and two policy options. Option 1 consisted of a low intensity regulation to address the different problems identified. Option 2 involved a high intensity regulation.

The impact assessment showed that option 1 would bring more benefits to the EU: these changes would make a real difference by making more data available for re-use by businesses (especially SMEs), governments, researchers and individuals. Re-use of public sector data would be cheaper and some data (such as research data) easier to re-use. In general, the measures of the preferred option would lead to significantly higher economic value and job creation compared with the baseline scenario (30 % more direct economic value and 40 % more jobs than in the baseline scenario).

The costs associated with the preferred option relate mainly to the necessary updating of the public sector digital infrastructure, needed to enable more dynamic data. The key element identified would be the cost of implementing and maintaining APIs, which make it easier for re-users to access dynamic data. Some other costs would initially be borne by a limited number of public sector bodies that still charge for data. They might lose revenue, as in certain cases they would not be able to continue charging for the re-use of PSI. Finally, there would be some legal and/or administrative costs linked to the new requirements for public undertakings and research establishments. However, all these costs would be less than the expected benefits to the whole economy, including the PSBs themselves, thanks to increased efficiency and extra budget revenue generated by taxation.

The Regulatory Scrutiny Board (RSB) reviewed the impact assessment report on 14 March 2018. The board gave a positive opinion with reservations. It criticised a number of shortcomings, such as the fact that the report does not adequately reflect stakeholder views and should elaborate further on how the initiative would address challenges such as the anonymisation of data and privacy, protection of databases and IPR. The section on impact also needed to include more information on costs and benefits. The Commission produced a new version on the basis of those recommendations.

The changes the proposal would bring

The general policy objective of the proposal for a directive on the re-use of public sector information is to make more public data available for re-use, ensuring fair competition and easy access to markets based on PSI, and enhancing cross-border innovative products and services. The proposal would aim to overcome the barriers that still prevent the full re-use of PSI. To this end, the improved directive would bring four main changes:

1. **The provision of real-time access to dynamic/real-time data via adequate technical means**: dynamic data is one of the most commercially valuable types of data, as it can be used for products and services that provide information in real time, such as travel or transport applications. However, the provision of real-time access to dynamic data held by PSBs is rare. Thus the proposal would include the requirement on public sector bodies to make such data available through APIs. For a limited number of fundamental high-value datasets (to be adopted through a delegated act) there would be an obligation to do so.
2. **Limiting the use of exceptions to the principle of charging the marginal cost:** PSBs would only be able to charge for the marginal costs of dissemination for the re-use of their data. The proposal would make the re-use of documents free of charge or limited to the marginal costs incurred for their reproduction, provision and

dissemination, and, where applicable, anonymisation of personal data and measures taken to protect commercially confidential information.[9]

3. **Preventing the emergence of new forms of exclusive arrangement between PSBs and re-users:** PSBs sometimes enter into arrangements with the private sector to derive extra value from their data. This can benefit large companies and limit the number of potential re-users.
4. **Increasing the supply of high-value public data for re-use:** the proposal would increase the availability of data by bringing new types of public and publicly-funded data into the scope of the directive,[10] such as data held by public undertakings in the utilities and transport sectors and research data resulting from public funding.

At present, data held by contracting entities providing services on the behalf of PSBs do not fall under the scope of the directive.[11]

Advisory committees

The European Economic and Social Committee (EESC) adopted its opinion on this proposal on 17 October 2018. The opinion states that the planned changes to the directive will improve the situation in general for the re-use of PSI. It finds that the 'lower legislative intensity' options chosen by the Commission are not sufficient to address all the problems identified regarding the effectiveness of the directive in areas such as the lock-in of public sector data, dynamic data, charging aspects or the directive's new scope. It also believes that the shortcomings identified by the Regulatory Scrutiny Board should be better addressed and proposes a number of solutions for each of them.

For the time being the European Committee of Regions (CoR) is not preparing an opinion on this proposal.

In an earlier opinion on building the data economy, the EESC called on the Commission to carry out a precise analysis of the state of play of free flow of data in the Member States, in order to remove unjustified barriers and put the right legal and technical provisions in place. It also noted that contractual freedom in the private sector should be respected.

The CoR opinion on building the data economy also supported the communication's aims, while pointing out that disadvantaged regions had neither the basic infrastructure nor the expertise needed to establish a digital data-driven economy, and recommended that regulatory assistance be provided for these regions.

National parliaments

The deadline for national parliaments to submit reasoned opinions the grounds of subsidiarity was 20 July 2018. No reasoned opinion was submitted for this proposal.

Stakeholders' views[12]

As shown in the position papers from the online public consultations, the majority of stakeholders agreed that EU legislative action was needed in the additional areas identified by the Commission for the recast, although the findings reflected a variety of different perspectives.

Firstly on the issue of improving technical means for re-use, some Danish banks noted that the existing PSI Directive already mandates the use of machine-readable formats and the use of open standards. However, the terms 'open' and 'standard' have a wide range of meanings associated with their usage, and imply that many variations may exist across the 28 EU Member States, which runs counter to a coherent digital single market in which cross-border interaction is facilitated in the best possible way.

Likewise the Norwegian government stated that rapid technological progress had generated a wealth of dynamic data, but little focus had been placed on giving access to such real-time data via

adequate means. In Norway, public institutions were increasingly becoming not only providers, but also major consumers of data, which they used to provide better services and improved decision making. They also highlighted the importance of private sector data here (i.e. for smart cities, etc.)

The PSI alliance called for dynamic data to be made available to re-users, according to PSI rules, at the same time as all other users. It stressed the importance of fast timing.

Similarly the RELX group, a global provider of information and analytics, stated by way of example that staff of their farming publications in the Netherlands complained of a delay in accessing data on farm animal movements, collected daily by the government, and not made available in real time but only much later when it was no longer of interest in practical terms.

Secondly, on the issue of opening up the scope of the directive to other types of publicly funded data to re-users, the European University Association (EUA) considered that research data, owing to its specificity, should not be treated in the same way as administrative data. Likewise the European Publishers Association noted that the sustainability of publishing output was essential for all stakeholders and for society in general. They requested a clear distinction between raw research data (not copyright protected) and copyright-protected texts in which these raw data could be included. Likewise the Software & Information Industry Association (SIIA) believed that raw research data should be made freely available to all researchers. More broadly, the WWW Foundation stated that most governments were not abiding by basic open data principles.

Science Europe argued that it was crucial to move to an open access system, in order to increase both the impact of research publications and the cost efficiency of the publication system. Though they noted that not all kinds of scientific output and data were as suitable as others for re-use (e.g. owing to legal restrictions) and open access. It stressed the importance of respect for privacy, confidentiality and consent. The French Publishers Association specified that publications resulting from public funding could only be made available in open access according to contractual conditions or specific agreements and as long as the costs of the necessary publishing and dissemination work were also financed upfront.

The open energy modelling community stated that many of the datasets they required for energy modelling and analysis were either not available, of a poor quality (despite mandatory transparency requirements) or ambiguously licensed or implicitly protected. In these latter cases, they stated: 'it may well not be lawful to use, repair, combine, and/or redistribute this data. While open licensing can address many of the issues we encounter, we believe that the law on copyright urgently needs to be overhauled to deal effectively with PSI, digital data, and the growing internet-mediated information commons'.

At present, according to ARD and ZDF, two major public service broadcasting organisations in Germany, the burden of copyright clearance might outweigh the benefits.

The European Statistical System (ESS) highlighted that opening up privately held data of general interest for re-use by statistical authorities would bring important socioeconomic benefits, but might not be an easy task. According to Statistics Denmark, getting access to some business data for statistical purposes had been cumbersome, not so much because the companies were not willing to share, but mainly because they were uncertain about what they were allowed to share. As a result, they often opted for the safe solution, namely not to grant access for statistical purposes. They wanted to see the review of the directive address this very clearly.

Vodafone argued that the focus should be on making public sector data freely available, not mandating public sector access to private sector data. In this context they identified the Inspire Directive as a good example. However, a significant amount of work was still required to ensure full implementation of the Inspire Directive by 2021.

The Ministry of Transport in Baden-Württemberg argued that the actual usability of data depended on quality, accessibility, interoperability and transparent terms of use: 'Legitimate interests of manufacturers may not preclude access of public authorities in justified cases of public interest,

while safeguarding the individual's right and protection of personal data. Possible asymmetries in favour of private industry resulting from the technical incidence of data generation in a vehicle or service should be avoided'. The potential of data-based solutions in the field of transport and mobility was built on data from private, industrial and public sector sources. Transport and mobility system information generated alongside infrastructure, in vehicles and through on-board systems, was linked with data generated by smart phones and similar devices. Added-value often relied on combination with further data sources and types, such as geo-data or even data originating from e-commerce and social media platforms.

Similarly, the Alliance of Rail New Entrants, ALLRAIL, welcomed the recent new open data law for public transport in Finland, which had made all operational and fare data available. They believed that sharing data at both national and European levels was the most efficient shortcut to remove the existing barriers for new operators.

The French enterprises association MEDEF emphasised that companies should be encouraged to share the data they considered to be of public interest, with a view to supporting innovation and the development of technologies. However, this should not be imposed on them. Likewise the European umbrella organisation of direct marketing associations, FEDMA, believed that private data should not have to be made public. The same concern was shared by the German federation of industries, BDI.

The French rail operator SNCF stated that obliging public transport operators to share their data with private competitors for free would distort competition.

The European transport association highlighted safety aspects and the fact that it was also necessary to consider the need to safeguard security by limiting public access to what might potentially be security-critical information.

The UK government contribution stated that the UK aimed to make key mapping infrastructure – and more specifically the Ordnance Survey's MasterMap – available as open data. However they believed that the present directive as currently framed and titled could not justifiably be used as a vehicle for imposing burdens on private entities relating to the re-use of privately held data.

The start-ups' association remarked that the obligation should not concern data that could unveil the trade secrets, know-how, market presence or commercial strategies of private economic operators or undermine the protection of their intellectual property. Data shared should therefore be limited to raw general data and exclude databases. The opposite could slow down private data-based innovation and have an adverse effect on competition

Veolia, a global energy and resource management group, asked for a clear definition of the notion of 'public interest'. This request was echoed by German engineering association VDMA, which pointed out that industrial data in processes such as prescriptive analytics reflected competition-relevant know-how.

Thirdly, on the review of only charging for marginal costs and on the issue of preventing exclusive agreements, FEDMA, a European umbrella organisation of direct marketing associations, considered that the circumstances under which exceptions to Article 6(1) of the current directive were currently allowed should not be eliminated but more narrowly defined. This would give the industry greater access to available data and foster market development. Public sector information had already been paid for by business and the public through taxation and should not be a source of profit.

The French postal service, La Poste, stated the opposite; that the French framework allowed it to define the conditions for re-use. It called on the European Commission to maintain this exception.

Deutsche Telekom (DT) worried that reasonable charges and greater access via modern information technologies (IT) to PSI might encourage dominant or near dominant firms to engage in anticompetitive conduct. To this end, DT considered it essential to involve the EU competition authority when deciding whether or not to grant access to PSI. However, more needed to be done

to further battle excessive charges and avoid double-counting and cross-subsidisation in the public sector, with a stronger emphasis on marginal dissemination costs, which should not cover costs linked to collection and storage of PSI, as these were already covered by tax revenues.

The EuroGeographics association stated that national mapping, cadastral and land registration authorities sought no change to the directive, and aimed to improve re-use through other means. In their experience, in some EU countries, the optimum way to guarantee a supply of high quality data to consistent standards in the long term was to recover appropriate costs through revenue.

The cities of Amsterdam and Hamburg highlighted that even though cities would benefit from sharing data and solutions among themselves, this needed to be balanced with the interests of companies to be able to commercialise the solutions they cooperated with cities to develop.

The University of Public Administration and Finance in Ludwigsburg (Germany) emphasised that local authorities, if not big cities, had very limited IT knowledge and IT resources. For this reason, provisions for data and message formats, licences and cost calculations needed to be very clear, comprehensive and without too much room for interpretation. They also noted that the existing directive did not provide clear instructions regarding data and message formats and did not include authority for the European Commission to issue delegated acts addressing these issues. As a result, data were provided in varying formats by the various public sector bodies, making re-use more expensive. This problem was surmountable for internet giants such as Google or Facebook, but not for the typical European SME or for private entities.

In this sense, the European Commission support study noted that the stakeholders consulted emphasised the need to receive more guidance on the aspect of protection of personal data under PSI, in terms of implementation of technical solutions (e.g. anonymisation, pseudonymisation), of legal solutions (such as consent-oriented or privacy-by-design rules) and of development of training for public officials and procedures for organisations to safeguard data protection. Moreover, they noted that the potential fines under the GDPR (up to €20 million or 4 % of annual worldwide turnover in extreme cases) could create a significant disincentive for public sector bodies to make data available. If new datasets and especially dynamic data become available in the future (through APIs) it will become increasingly important to assess the question of the preliminary data protection impact rapidly.

Legislative process

Within the European Parliament, the proposal was assigned to the Committee on Industry, Research and Energy (ITRE), with Neoklis Sylikiotis (GUE/NGL, Cyprus) appointed rapporteur. The Internal Market and Consumer Protection (IMCO), Civil Liberties, Justice and Home Affairs (LIBE), and Culture and Education (CULT) Committees have been asked for an opinion.

The Legal Affairs Committee was asked for an opinion on the use of the recast technique. The opinion, which concluded that the proposal does not comprise any substantive amendments other than those identified as such, was adopted on 3 September 2018.

The draft report was published on 12 September 2018 and the deadline for tabling amendments was 11 October 2018. The rapporteur is in favour of Member States encouraging the use of open licences, but the decision on whether or not to authorise re-use of any or all documents would need to remain with the public undertaking concerned, as should the modalities. The rapporteur considers that Parliament should propose a list of categories for high value datasets, empowering the Commission to adopt delegated acts to supplement the list[13] of high value datasets and in particular to further specify high value datasets. On the digitalisation of cultural resources, the rapporteur proposes a reduction in the duration of exclusive agreements from the ten years proposed by the Commission to seven years.

On 11 October 2018, the IMCO committee adopted its opinion with 30 votes in favour, 1 against and 6 abstentions. It proposes to rename the text 'Open data and re-use of public sector information'. In

that spirit, it recommends that Member States design policies based on the principle of 'open by design and by default', with regard to all documents falling within the scope of the directive. It also proposes a number of amendments to improve the re-use of data even further, for instance by ensuring that data is released under the least restrictive conditions or licensing terms. It also asks for the re-use of data to be free of charge, further limiting to very narrowly defined circumstances the possibilities for the public sector to charge for data.

The Council held a policy debate in June 2018 on the Commission proposal. The debate was structured around a set of questions prepared by the presidency in a background document. During the debate, ministers agreed that Europe's competitiveness required public data to be available as it was a key resource for innovation and data-based technologies, in particular for artificial intelligence applications, which required vast amounts of high-quality data.

EP SUPPORTING ANALYSIS

Negreiro M., Free flow of non-personal data in the European Union, EPRS, European Parliament, June 2018.

Korver, R., Review of the Directive on the Re-use of Public Sector Information (Directive 2013/37/EU), Implementation Appraisal, EPRS, European Parliament, April 2018.

OTHER SOURCES

Re-use of public sector information – recast, European Parliament, Legislative Observatory (OEIL).

ENDNOTES

1 See Directive 2003/98/EC of the European Parliament and the Council on the re-use of public sector information.

2 See Article 6 of the directive.

3 These guidelines were prepared on the basis of contributions to a public consultation and from the PSI expert group.

4 In September 2015, the Commission began formal infringement proceedings against 17 Member States that had not yet notified it of the relevant national implementation measures. The last Member State notified transposition on 15 September 2017.

5 The main results of these are analysed in the section on stakeholders' views.

6 Equal proportions of respondents (25 %) agreed and disagreed with maintaining or changing this exception, or had no opinion about it.

7 The study was performed by Deloitte, time.lex, WIK consult, Spark Legal Network and the Lisbon Council.

8 Initially there were five options but two options were rejected at an early stage.

9 Derogations would be provided for: (i) public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks; (ii) libraries, including university libraries, museums and archives; and (iii) private partners.

10 The scope of application of the directive would be extended to documents held by public undertakings active in the areas defined in Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and by public undertakings acting as public service operators, insofar as they are were produced as part of the provision of services in the general interest; it would also include the results of publicly funded scientific research.

11 The proposal adds a new Chapter V that defines a specific category of high-value datasets. The list of high-value datasets would be determined by a delegated act pursuant to Article 290 TFEU. This delegated act would also specify the modalities for their publication and re-use. In principle, the re-use of these high-value datasets would be free of charge and, for dynamic content, APIs would be used. For documents whose scope of application is extended by the recast, the general principle applies only insofar as the public undertakings in question have made the documents available for re-use. There is no obligation to make them accessible for re-use by default.

12 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

13 As set out in Annex Ia of the draft report.

DISCLAIMER AND COPYRIGHT

eprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

www.europarl.europa.eu/thinktank (internet)

http://epthinktank.eu (blog)

First edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.