

MEMBER STATES CONSULTATION

Review of the application of Directive 2003/98/EEC on the re-use of public sector information, including the extent of the increase in re-use of public sector documents and the effects of the principles applied to charging.

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I Implementation and impact of the Directive

1. *In addition to transposition measures, could you please indicate additional practical/deployment measures (e.g. national portals, asset lists etc) that have been taken in your State by the main public sector content holders in your country to facilitate the re-use of PSI?*

Since the adoption of the Directive the Dutch government has launched a number of initiatives to facilitate the re-use of PSI. In the first place basic information of the democratic constitutional state (for example acts, decrees, regulations and other public announcements) has been further unclassified and can now be found online. Citizens and businesses are under no financial or legal restrictions regarding the use and reuse of this data.

Furthermore a number of studies concerning different aspects of the directive have been commissioned to help understand the context of the Directive. For example the Dutch government commissioned a study on the effect on wealth of various forms of financing access to electronic databanks.¹ And in 2006 a study was conducted into the extent of exclusive agreements on the re-use of public sector information at the central

¹http://www.epsiplus.com/reports/welvaartseffecten_van_verschillende_financieringsmethoden_van_elektronische_gegevensbestanden

government level.² In 2007 a comparative rapport was published on open access policy for government information.³

More recently the Dutch government has made an agreement (convenant) concerning the costs for supply and re-use of PSI with the provinces in the Netherlands. With this agreement it's possible to take a next important step in our public sector information re-use policy. We also expect to make an agreement with the councils and the waterboards in the very near future.

On top of disclosing raw data the Dutch Government and its subsidiaries are planning on delivering more and more rich services combining data into meaningful and re-usable information.

Progress has also been made in the important field of (the re-use of) geo-information. The Dutch government endorsed a national approach and implementation strategy for the realization of a key geo-information facility (GIDEON). One of the main objectives of this approach is to enable the public and businesses to retrieve and use all relevant geo-information. Since 2003 the Dutch Government and its subsidiaries have disclosed various registries concerning public geo-information, e.g. spatial plans (RO Online), public restrictions (Wet kenbaarheid publiekrechtelijke beperkingen) and cultural-historical information (KICH). Another important step taken in this sector is the establishment of key (geo)registers for addresses, buildings and topography. The primary aim of these registers is to facilitate the functioning of governmental bodies, but the information will also be made available to the general public at the lowest possible price point. The next step will be to make these separate registries available through one national gateway (National geo-register). Ultimately the Netherlands is also working on the full implementation of the INSPIRE Framework Directive (Infrastructure for Spatial Information in Europe).

2. *Do you consider that the Directive has had an impact on the information market in your country? If so how?*

The Dutch government considers that the Directive has had an impact on the information market in the Netherlands as it has provided in a need for a legal framework and it has stimulated new initiatives. By making administrative information public, available, accessible and reusable, the transparency of government administration is improved and citizens are given more possibilities to monitor government administration and participate in the democratic debate. We do however feel that the Directive shall have an ongoing impact in the future as more and more information holders become aware of the key principles regarding re-use.

²http://www.epsiplus.com/reports/netherlands_study_on_exclusive_agreements_2006

³ http://www.epsiplus.com/news/netherlands_open_access_policy

3. Has the implementation of the Directive resulted in a revised charging policy by public sector bodies?

For the national government a price mechanism already existed. For other levels of government the Directive created a price policy. Public sector bodies are now by law not allowed to charge more than the total costs of collecting, producing, reproducing and disseminating documents, together with a reasonable return on investment. The Dutch policy is to take one step further and to make PSI available for re-use as much as possible, charging marginal costs (or less). There are plans to enforce this policy by issuing new national legislation.

4. What kind of problems do you believe private companies in your country are encountering when wishing to re-use public sector information?

The problems encountered by the private sector could be summarised as follows:

- a lack of awareness amongst public sector bodies regarding their responsibilities;
- a lack of engagement in certain parts of the public sector, especially in local government;
- the experience that there is a difference between formally available information, yet not re-usable due to for example lack of actual access to the information
- the experience that public sector bodies, contrary to the situation on paper, appear to reserve copyright and database-right on a massive scale. Citizens and businesses do have access to the information, but are unable to re-use that information at their discretion without explicit consent.

II. Scope of the Directive

5. Would it be appropriate to include cultural establishments, education and research organisations and public sector broadcasters, within the scope of the Directive?

The Netherlands national policies are targeted to ensure a wide public access to cultural and broadcasters information. The Netherlands acknowledges also that access to information is important for the internal market.

The Dutch government however believes it would be fundamentally wrong to include cultural establishments and public broadcasters within the scope of the Directive. The EC-Treaty clearly gives guarantees for member state competences in these fields. Bringing these sectors under the scope of the directive would limit the scope of Member State competence in developing cultural and media policies. To illustrate: e.g. the public service broadcasters, libraries and musea in the Netherlands are, as a consequence of a national choice, at distance from Government and therefore not producing public sector information.

As for scientific information: The Netherlands policy is to further open access to publicly funded scientific information as much as possible. So it might be conceivable to include scientific information in the scope of this Directive. Further study is needed to

assess the economic and social impact and potential and to find out what other consequences would be.

6. What would be the impact and societal benefits of including these sectors within the scope of the Directive? What are the problems these excluded sectors may encounter should they be included within the scope of the Directive?

See above.

Looking Ahead

7. What technical, organisational, legal and practical measures could be established by national administrations and/or at European level to optimise the re-use of PSI (e.g. efficient dispute settlement mechanisms)?

National Level

As mentioned earlier we have plans to take our PSI policy one step further and to make PSI available for re-use as much as possible, charging marginal costs (or less) and no conditions that limit the reuse. There are plans to implement this policy by issuing new legislation. Furthermore it is crucial to ensure a wider uptake of the Directive and to make sure public information holders are aware of the legal framework by facilitating ways to make it a part of their mindset in their everyday work. Also further assessment of the current pricing, access and licensing regimes can be undertaken. Finally many of the problems concerning the reuse of public sector information could be avoided if all the operating rights were to be claimed by the public sector when commissioning research institutions and consultants to carry out assignments. This is the only way of ensuring that information can be reused according to specific needs.

European level

The focus of effort for the next 2 years at least should be upon encouragement to Member States in implementing and enforcing the main provisions of the Directive and to the private sector in pursuing the business opportunities created. This should be supported by the provision of a further Communication and guidance from the Commission.

In the view of the Netherlands, it is important to continue and intensify work to establish and disseminate the economic case for marginal cost charging or no charges more conclusively.

8. Should legislative amendments be introduced in the Directive to make it more efficient? If so, which ones and why? Would guidelines on proper implementation and application of the Directive be useful?

The Netherlands support any actions that promote adoption of the marginal costs pricing principle (which has now been adopted, for example, by OECD). Our view is that the current principles governing charging are applied widely to establish high charges based

on no transparent calculation of how prices were arrived at. This provision is quite likely to undermine substantially the implementation of the Directive in the longer term by enabling public sector bodies or their agencies to trade in a manner which is essentially commercial and competitive with private sector re-users.

On the whole it's our opinion that the Directive doesn't need to be amended at this moment. The policy laid down in the Directive needs to be given more time and continued effort, in order to optimise the potential for impact. The Directive provides a minimum framework and it is open to member states to go beyond the provisions set out in the Directive. The Netherlands has plans to make use of this possibility by further sharpening the legislation on charging principles.

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