



Consultation answers from the Slovenian Government to the European Commission's Questionnaire on 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

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?**

a. Promotion and Counselling

In accordance with Article 32 of the Access to Public Information Act (Official Gazette RS, No. 51/2006, official consolidated text, hereinafter referred to as APIA) the Ministry of Public Administration performs promotional and developmental tasks in relation to access to and re-use of public sector information (hereinafter referred to as PSI). In this context the Ministry of Public Administration provides counselling to other bodies in relation to the application of the APIA and informs the public about the means and conditions for the access to and re-use of public information.

b. A national catalogue of public information

For the private sector to take full advantage of the economic value of information collected by the public sector when executing its tasks, it is particularly important that the public has an overview of the information accessible for re-use. In order to help the private sector find what information is available for re-use, the Ministry of Public Administration has, in accordance with Article 8 of the APIA, set up a national catalogue of public information, containing a list of individual public sector bodies and the PSI they hold, partitioned into content blocks.

The national catalogue of public information is informative in nature and should help its users when ascertaining what information a given PSI holder possesses. However, this does not mean that applicants can request only the information listed in the catalogue, but also other information that might be omitted from it. The catalogue is only meant to serve as a source of information and not a legally binding register, and as such does not affect the accessibility and re-use of PSI. The national catalogue is updated regularly and easily accessible both on the website of the Ministry for public administration and on the joint governmental portal *e-uprava*.

c. Redress Mechanism

When deciding on the request for re-use of PSI, the PSI holder is obligated to issue a written decision within the time limit of 20 working days¹ beginning from the day of receiving the complete request if it intends to charge the re-use of PSI or set any other conditions therefor. The applicant has the right to appeal the decision whereby the PSI holder has denied the applicant's request for the re-use of PSI to the Information Commissioner, who acts as an autonomous and independent state body.² Decisions of the Information Commissioner are legally binding; so as to fully safeguard the rule of law and the possibility of judicial review, however, the appellant may then also seek redress against a decision of the Information Commissioner by means of an administrative dispute before the Administrative Court.

Since the implementation of the Directive 2003/98/EC on the re-use of public sector information (hereinafter referred to as the Directive), the Information Commissioner decided on nine appeals against the decisions of the PSI holders. In two cases, the Information Commissioner resolved the matter in favour of the applicant; in four cases, she rejected the complaints; in one case, she partially approved re-use of PSI; in one case, she remanded the matter to the first instance authority; and in one she annulled the decision of the first instance body.

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

Before the implementation of the Directive,³ the re-use of PSI in Slovenia was mainly unregulated and subject to individual (often exclusive) contracts between re-users and PSI holders. Slovenia considers that the adoption of the general principles of the Directive into Slovenian legislation has had a considerable impact on the information market in Slovenia, mainly because of the following:

- The re-use of information is now allowed and open to all applicants at the same price and under the same conditions;
- Non-discriminatory conditions for re-use ensuring the same basic conditions for re-use to all existing and potential re-users;
- Transparency of the conditions for re-use; PSI holders in Slovenia are obligated to publish in advance all conditions of re-use, information on pricing and charging policy, as well as the cost calculation method according to which they will consider the special requests, on their websites (Article 36(2))
- General prohibition of exclusive arrangements; the PSI holder can grant an exclusive right for the re-use of information in exceptional cases, if this is unavoidably necessary for the provision of a public service or other services in the public interest. The validity of the reason for granting such an exclusive right is subject to regular review, and is accordingly

¹ The time limit can be extended by maximum 30 working days in exceptional cases when the body requires more time for the transmission of requested information due to the implementation of partial access to public information in accordance with the provisions laid down in Article 7 of APIA, or due to comprehensive documentation (Article 24).

² The Information Commissioner was established by the Information Commissioner Act (ZInFP) on Dec 31, 2005.

³ The Directive has been fully implemented with the adoption of the Act on revisions and additions to the Access to Public Information Act - ZDIJZ-A (Official Gazette RS, No. 61/05 of June 30, 2005).

reviewed every three years. The applicant can appeal the decision of the PSI holder of granting an exclusive right to the Information Commissioner. (Article 36.a(4)). The latter also manages the record of all exclusive rights granted.

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

Yes. As already stated in response to question 2, prior to the implementation of the Directive the re-use of PSI has been mainly unregulated and consequently the pricing and charging policy has been in the exclusive domain of the PSI holder. The implementation of the Directive thus resulted in a significantly revised charging policy, which ensures all the applicants the equal right to re-use the PSI under non-discriminatory and transparent conditions for its re-use.

According to Article 34.a of the APIA, the PSI holder can only charge for the re-use of information for commercial purposes, whereas re-use for non-commercial purposes must be allowed free of charge. Furthermore, charging for re-use of PSI for commercial purposes is optional and not obligatory and the PSI holder must abide by the upper limit for pricing and charging as set by the APIA.

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

Notwithstanding the fact that the Directive does not contain an obligation to allow re-use of PSI (Recital 9), Slovenian legislation obligates all PSI holders (public sector bodies) to permit the re-use of PSI. However, since provisions of the Directive are not mandatory and PSI holders in other member states can opt-out, this could have a detrimental effect on potential re-users preventing them from making a viable EU-wide information product. Furthermore, lack of clarity as to what falls within the scope of the public task could further prevent companies to step into the cross-border exploitation of PSI.

II. Scope of the Directive

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

Slovenia considers that including cultural establishments, education and research organizations could in some cases present a significant administrative burden on these organizations. Both the Directive and the APIA exclude these organizations as many are holders of third party copyrighted material, and obligation to allow re-use could impose a significant burden on them when processing applicants' requests that would be disproportionate to any beneficial effects that might have been incurred. Based on the above, Slovenia believes that including these institutions within the scope of the re-use provisions

would require serious consideration to be given to the effect that it would have on the organizations concerned.

- 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 the response to question 5.

III. 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)?**

In ensuring better conditions for the exploitation of PSI and consequently for a boost to the economic activity and job creation, Slovenia considers that establishing an independent regulatory body (such as the Slovenian Information Commissioner) providing an easy and affordable channel for redress is of the utmost importance.

Furthermore, certain terms in the Directive, such as “public task” and “reasonable return on investment”, lack clarity as to their proper legal interpretation. In this respect, further elaboration of their exact meaning and scope could provide for a higher level of legal certainty.

- 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?**

Since the process of transposing the Directive into national legislation by the deadline (July 2005) was relatively slow and far from uniform, Slovenia believes that it is still too early for further legislative amendments. Slovenia is of the opinion that at this time, further observations on the application of the Directive and its effects in the legal orders of different Member States are still needed. It is therefore believed that efforts in the near future should be focused on fleshing out of the proper implementation of the main provisions of the Directive as well as further elaborating on the application and impact of different pricing and charging models (marginal cost model, cost-recovery model etc.).

- 9. Additional Comments**