



Confindustria Servizi Innovativi e Tecnologici's responses to consultation on the Re-use of Public Sector Information Directive

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About Confindustria Servizi Innovativi e Tecnologici

Confindustria Servizi Innovativi e Tecnologici (Federation of Innovative and Technological Services, hereinafter "CSIT") is the Italian Federation that gives a common voice to all businesses that create technological, professional, managerial, and organisational innovation.

The Federation aims at increasing the sector's economic growth and political influence, so as to make it a driving factor enhancing Italy's productivity and modernization in the frame of the economic trend of convergence between Information & Communication Technology and businesses and professional services, forcing the adoption by companies of new strategies and new competitive tools.

CSIT represents businesses that offer consulting services, advertising, public relations and marketing, computer technologies, digital contents, e-media, engineering, internet, certification bodies, radio and television networks, research and surveys, satellite applications, training, technological and professional services, telecommunications. Altogether all the above sectors are a very significant part of the economy representing 18% of the Italian GDP.

The Federation, represents 17,000 companies employing 600,000 workers with an overall turnover of 102 billion Euros, organized in 47 Industry Associations and 63 Local Organisations.

General comments

CSIT welcomes the opportunity to provide comments on the public consultation in relation to different aspects related to the implementation, impact and scope of the Directive to feed into the debate regarding the review of the Directive 2003/98/EC on the re-use of public sector information (PSI) adopted on 17 November 2003.

CSIT strongly believes that a review shall be dealt with as a matter of urgency so to make effective principles set out in the Directive that despite the timing completion of the implementation process in Italy are still dead letter due to a still too monopolistic attitude of the PA in treating PSIHs .

Particularly CSIT deems essential modifications in the Directive focusing particularly on the following issues:

- *Public administration should provide and ensure continuous access to raw data. A limitation should be imposed on public authorities not to provide any value added services on the basis of the raw data owned directly or through other administrative or public entities.*



- *A limitation should be imposed on Public authorities not to define as “institutional”, pursuant to applicable law, new services with the only scope to avoid the application of principles set forth by the Directive.*
- *Legal provisions shall define what constitutes a ‘marginal cost’ and oblige Member States to make pricing policy standardised and transparent.*

Only taking into account the above mention issues, CSIT believes it will be possible to substantially enhance access and obtain a more effective use of PSIHs, so to widen-up innovative services and contents in the market and realise a more effective and harmonised use of PSIHs within Member States.

Implementation and impact of the Directive

1. In your opinion, has the Directive been properly implemented and applied in your country and beyond? If so, please indicate ways in which public sector bodies are contributing to facilitating access and re-use of their information. If not so, please give indications on what kind of problems you are encountering when wishing to reuse public sector information.

2. Has the implementation of the Directive resulted in a revised charging policy by public sector bodies? If so, has this had any impact, e.g. on the volume of information downloaded, number of hits, number of re-users registered, etc?

CSIT believes that, unfortunately and notwithstanding the timely implementation of the Directive by Legislative Decree N° 36 of 24 January 2006, the Directive has not been properly implemented, and principles of openness, qualitative and quantitative access and fair competition in PSI sector, are still very far to be effective.

PA in Italy is fully entitled to a boundless use of the information owned and produced. This implies that PA is willing not to limit its activities to manage and detain raw data but also to offer value added services in competition with private companies.

On the contrary, a limitation shall be imposed on PA not to provide any value added services on the basis of the raw data owned directly or through other administrative or public entities, and instead it should be eventually given the possibility to a newco to provide value added services on the market, at the same technical and economical basis of private competitors, including and mainly in relation to the pricing issue.

This would avoid attributing anti competitive advantages to public operators and can have positive effects in terms of fair competition on the market.

In the light of the foregoing it should be stressed that the Italian market in relation to the re-use of PSI still appears to be too monopolistic and not inspired by competitive principles contrary to what is provided for by the Directive. In fact, in Italy several kinds of PSI such as for ex. energetic or environmental data are kept by few entitled companies amongst which very few are private or mix private public capital companies.

By way of example in relation to the information relevant to mortgages and cadastral registries, the Land Registry Office not only owns the raw data but also is willing to provide monitoring value added service using data contained in the list of subjects. A new service provided by the PA shall not be defined as “institutional” pursuant to applicable law with the only scope to avoid the application of principles set forth by the Directive. This is instead what has in fact happened for the monitoring activity declared by law “institutional” and



consequently not subject to principles established by the Directive.(luckily this legal provision as of today has never come into force).

This situation has in fact prevented many private companies to give the same services due to the excessive cost to gain access to the list of subjects for the use of which they shall pay to the Land Registry Office a fee increased of the 500%. As a direct consequence, the same companies were obliged to dismiss completely the monitoring activity with a loss in workforce of approximately 30%.

As far as the PSI detained by the Personal Registry Office are concerned, there are still a lot of problems to gain access since PA do not disclose information alleging they are confidential. More over it should be stressed that, despite the fact that data needed to perform credit collector activities are in electronic format, it is forbidden to have access to said information in digital format and, as a consequence, it is still necessary to go physically to the Office to extract a copy.

With reference to data contained in electoral roles, despite the fact that, according to applicable privacy laws and relevant codes of application, companies executing activities related to applied scientific research have the right to access and use electoral roles data, public administration, also in virtue of a specific Ministerial communication issued in 2006, explicitly deny such access and consequently to release of such information

As far as legal data are concerned, from time to time, there has been the attempt made by PA to set up infrastructures and services aimed to provide the same added value services provided for by private companies to professional users. Some of these attempts had also been included in law provisions such as art 107 L. 388/2000 and following D.P.C.M 24 January 2003.

The argument sustained by PA has always been to provide free access to citizens to basic legal information, which is very laudable. However, in the reality, the implementations of such regulations have always been addressed to professional users (e.g. legal databases with professional query system) thus fully overlapping publishers' activities, without taking into account any interest for citizens. Since these initiatives were not effective in practice, they didn't affect seriously the market. Nevertheless AIE (Italian Publishers Associations) after the introduction of the above mentioned legislative regulations, carried out a study in 2004, to estimate the impact of such provisions on the legal publishing sector. According to this study two different scenarios had been foreseen.

Scenario 1 - PA provides a free access to database containing only laws and regulations of interest for citizens: legal database publishing turnover would decrease by 13.9% (25.5 billion euros less), while the whole sector would record a loss of 7.8% in terms of total turnover and a loss of 10% in terms of employed workforce. Scenario 2 - PA provides a free access to database with advanced search tools (indexing, referencing, semantic search engine): legal database publishing turnover would decrease by 56.3% (102 billion euros less), while the whole sector would have record a loss of 24.6% in terms of total turnover and a loss of 29% in terms of employed workforce.

Similar attitude of the Public administration is shown in the cultural and educational sector, where behind the myth of free access to cultural content initiatives, PA is planning to provide value added products and services competing with the private sector.

Another example can be made in relation to data pertaining to the sanitary-pharmaceutical system (epidemiological data). Particularly, reference is made to data contained in the Hospital Discharge Certificate referring to patients' diagnostic and therapeutic data, and to information contained in medical prescriptions subject to public reimbursement. The re-use of such data and their statistic elaboration would have the benefit to give useful information to feed in scientific researches, as well to provide precious information for the benefit of the pharmaceutical and sanitary system. Instead, currently, such raw data are lost since not disclosed and not treated nor elaborated by public administrations that do not have



competencies as well as technical and administrative skills and resources to use and manage them in a proper manner.

Scope of the Directive

3. In your opinion would it be appropriate to include cultural establishments, education and research organisations and public service broadcasters, within the scope of the Directive?

4. 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?

CSIT deems it would be very useful to enlarge the scope of the Directive including also cultural establishments, education and research organisations and public service broadcasters.

CSIT strongly believes that the inclusion of these sectors and relevant information within the scope of the Directive, will have, as implicit effect, a market expansion in relation to services that can be offered, as well in relation to tools and channels where a wider number of information can be used, re used and circulated with a huge benefit for both consumers and private companies. The re-use of such data, for instance via the electronic platforms, contributes to the development of services as well to the diffusion of European cultural features.

Generally speaking, we consider that a huge availability of public data and their full digitalisation should be provided for, at EU and national level, as soon as possible. For instance, in the health sector, electronic communications operators can contribute to the evolution of national and European e-Health Plans through different digital solutions for which they need the availability of personal and secure data. A strong efforts by the public administrations towards a -as widest as possible- availability of public data, as well as their complete digitisation is thus essential for the development of the market and to the benefit of all EU citizens. Also, the full interoperability of the systems using the relevant data, is fundamental in order to effectively benefit users, with a substantial reduction in the public expenditure.

As good example, CSIT has appreciated the efforts recently made by CNIPA the Italian Centre for Informatics in Public Administration, an institutional body operating in within the Government structure. In fact, CNIPA in defining its priorities for 2008 has listed on top: 1. development of on line services and relevant applications services for enterprises and citizens, 2. the on-line incorporation of services and databases owned by the local and central administrations, 3. the digitalisation of proceedings and electronic management of documents. Furthermore, in another official document entitled "Toward a national system of e-government" CNIPA explained the strategic measures to put in practice towards the realisation of an effective interoperability of the information systems, and to spread the electronic management of documents and their digitalisation in within all administrative bodies. In the same document, CNIPA recorded the importance of development of telemedical systems and the always more



diffuse use of wireless and wi fi networks to support doctors mobility and the use of tools such as wearable computer that will allow the advanced use of technologies for the connectivity.

In conclusion, bearing in mind limits that might be posed by legal requirements and restrictions such as data protection, IPR secure management of personal information, copyright, internet/electronic service providers liability on the basis of the e-commerce directive etc, CSIT strongly deems that a wider use and re-use of documents and a more efficient distribution of information and content will increase economic and social benefits for both the public and the private sectors.

iii. Looking ahead

5. 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)?

6. 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?

CSIT considers that the following issues might be useful to better optimise the re-use and make effective the access in terms of quantity and quality particularly in relation to data availability and relevant applicable proceedings. CSIT deems that the same provisions should be provided for by laws and therefore amendments of the Directive should be consistently introduced so to render the re-use of PSI more the more effective as possible

Creation of an asset lists or other kinds of databases *In Italy there is not a unique asset point, listing where information about what kind of PSI is available There are certain PA websites, such as Land Registry Office and the Tax Agency Office that do offer list of PSI available but access is denied until the payment of a very expensive fee. It should be stressed that there are still many PA in Italy that do not provide at all any kind of databases listing PSI available. Furthermore, it might be useful to highlight that in Italy the crucial problem in the field of asset lists is the lack of standardisation in the way PSI are identified listed and described. Harmonising these modalities would for sure enhance PSIs retrievability even when available on different databases and guarantee interoperability with other EU asset registries thus creating an effective cross-border market for PSI.*



License Mechanism According to applicable rules in Italy, it is clear that in order to re-use the relevant information, a (very expensive) fee is due but it has not been made equally clear if a license is also necessary. The legislative Decree that has implemented in Italy the Directive has excluded from the scope of the legislative provisions several type of information furthermore standard license agreements have not been established and, policy mechanisms and copy right issues related to PSI access and re-use are absolutely unclear.

In the cultural sector, where instead a mechanism of license is provided (e.g. to access images owned by the PA on cultural heritage) such provision is so ineffective, that in fact is causing delays in the commercial activity carried out by private publishers.

Independent Regulator The creation of an Independent regulator either set up with the form of an Authority or as an Agency, conceived as an independent body operating pursuant to streamline procedures in order not to create barriers to the mechanism in terms of burdensome bureaucracy, would be useful. In addition, it should not duplicate the tasks already dealt with by other authorities. Such entity might also have inter alia powers to enforce law and case law, supervise redress mechanisms, ensure the correct application of pricing issues, the respect of intellectual property rights, etc. In view of a possible enlargement of the scope of PSI directive to other sectors, it is also possible to conceive a model of Agency made up of interconnected specialized sub-agencies, because of the peculiar needs of some categories of PSIHs, which should be taken into account.

Pricing It would be very important to introduce legislative prescription in relation to the pricing issue.

In Italy in fact pricing is established by law in terms of taxes due for the use of PSI. Ideally PSIHs shall be available at a small as possible marginal cost as explicitly provided for by OECD¹ “When public sector information is not provided free of charge, pricing public sector information transparently and consistently within and, as far as possible, across different public sector organizations so that it facilitates access and re-use and ensures competition. Where possible, costs charged to any user should not exceed marginal costs of maintenance and distribution, and in special cases extra costs for example of digitization. Basing any higher pricing on clearly expressed policy grounds.” Consistently with this Recommendation, CSIT deems that it should be ruled that costs charge to any user to gain access to PSI should not exceed the real cost beard by PA to deliver raw data Such expense related to the solely real cost of distribution of the row data shall be the ONLY applicable cost and therefore should replace any other fee currently due pursuant to Italian law, so to avoid any duplication of costs.

Openness The availability of PSI for use and re-use should be based upon presumption of openness. The effective openness and access to PSI should be the default rule applicable and ground of refusal or limitations should be precisely determined by Law. In Italy, pursuant to Legislative Decree 36/2006 in fact public sector bodies are not

¹ OECD Recommendation of the Council for Enhanced Access and more Effective Use of Public Sector Information C(2008)36



obliged to allow the re-use and therefore it is at their complete discretion to give access or refuse it, without any obligation to justify the restrictions.

7. Other comments

CSIT considers that the Directive should also provide for the obligation upon MS to facilitate where feasible public-private partnership in making PSI Available, for ex promoting financing measures to support costs of digitalization.

At European level should also be encouraged the wide exchange of best practices and information and promoted the implementations of mechanisms to promote an harmonized re-use of PSI particularly in relation to pricing models, copyright issues and with the aim to tackle any situation of unfair competition also in relation to public value added activities that shall be performed on the same basis of their private competitors, hopefully with a normative obligation imposed on PA to limit its activity to provide and effectively ensure continuous access to row data.

Conclusions

In the light of the foregoing, CSIT asks the Commission to review the Directive with the aim of enhancing access to PSI, so to widen-up innovative services and contents in the market and realize a more effective and harmonized use of PSI within Member States.



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