

Question: 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.

Answer: In Belgium the Directive has been transposed at the federal and at the regional level. Before the transposition the Belgian supervisory authority for personal data protection (the "Commission for the protection of private life" - [www.privacycommission.be](http://www.privacycommission.be)) has issued a series of opinions, addressed to the federal and regional legislators, about the question how to reconcile the re-use of public sector information with the application of personal data protection legislation (e.g. Nr 04/2006 of 8 February 2006, [www.privacycommission.be](http://www.privacycommission.be)). The conclusion of the Privacycommission was that public authorities can only transmit personal data for re-use on the condition that these personal data first have been anonymised, in order to make any link to an identified or identifiable person absolutely impossible.

This conclusion has been implemented in the legislation at the federal level and in most of the regional transpositions (French-speaking Community, German-speaking Community, Walloon Region, Brussels Capital Region), except in the Flemish transposition decree). As a consequence all the public authorities in Belgium, except the public authorities belonging to the Flemish Region, **have to make personal data anonymous before they can be transmitted for re-use.**

This has dramatic consequences, which can be illustrated by two examples:

- company information contains always personal data (often the name of the company already refers to a natural person): data from company registers can therefore no longer be re-used (a discussion is currently going on about one particular case: commercial re-use of company data from the National Crossroadsbank for Enterprises because the relevant legislation explicitly permits commercial re-use).
- public sector data containing personal information can no longer be re-used for scientific purposes: this consequence has apparently escaped from the attention of the Privacycommission because it continues to publish recommendations allowing re-use of public sector data without imposing anonymisation.

It is absolutely necessary to clarify the relationship between the European rules on the re-use of PSI and those of the European data protection directive 95/46/EC. The current opinion of the Art. 29 Working Party ([http://ec.europa.eu/justice\\_home/fsj/privacy/docs/wpdocs/2003/wp83\\_en.pdf](http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2003/wp83_en.pdf)) doesn't provide a sufficiently clear answer. The contested Belgian transposition of the PSI-directive is a consequence of this uncertainty.

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