

MINUTES
6TH MEETING PUBLIC SECTOR INFORMATION GROUP
LUXEMBOURG, 1 OCTOBER 2004

1. WELCOME AND INTRODUCTION BY THE CHAIRMAN.

The Chairman, Javier Hernandez-Ros, Head of Unit DG INFSO E4, welcomed the members of the PSI Group. He reminded those Members of the Group that did not return the PSI template on the state of transposition before the meeting to do so within the next 2 weeks. The Commission intends to publish the templates on the PSI web site, including the name of the relevant contact persons in the Member State. None of the members of the Group objected to the publication of the PSI templates on the Commission web site.

2. UPDATE BY MEMBER STATES ON THE STATE OF PLAY ON THE TRANSPOSITION OF THE DIRECTIVE

Austria has made a first draft law and discussions are ongoing. Most probably legislation must be passed both on the federal and the level of the Länder, which would imply the passing of 10 laws instead of 1.

Belgium has done considerable preparatory work during the inter institutional discussions on the directive and they are in the process of setting up a working group for the purpose of informing the public services at all levels of government on the implications of the directive. The *Agence pour la simplification administrative (ASA)* has organised several consultations with different agencies at the federal level familiar with access rules.

The Czech Republic will make a proposal in January on relevant changes to the Act on Free Access to Information. A working group has finalized an analysis and presented a first draft of amendments.

In **Germany** a draft legislation prepared by the Federal Ministry of Economic and Labour is in consultation at the federal level. The consultation will soon be extended to other public sector bodies affected by the directive. Some challenges remain on the methods of implementation between the State and the Länder and on certain issues on the relationship between re-use/access and internal/external use of documents.

Denmark will publish a draft legal act towards the end of October. At the moment they are looking particularly at the application and implementation of online licences. No implementation delays are expected.

France has a working group under the *Agence pour le développement de l'Administration Electronique (ADAE) - Service du Premier Ministre mis à la disposition du Ministère de la Fonction Publique* which meets once a month. Some questions remain on the application of the scope of the directive, the existing prohibition on re-use, the relationship to existing privacy laws and the necessary changes to the 1978 access regime.

A working group has been set up in **Greece**. Ongoing issues concern the establishment of asset lists and the provision on prohibitions on exclusive rights. A public consultation is planned.

The Netherlands will make a proposal to the Council of State within the next 2 months where amendments are suggested to existing laws governing governmental information.

The Internal consultation process to address the need for new legislation and get an overview of the availability of existing public sector information in **Luxembourg** has ended. A working group is currently being set up with representatives from the *Ministère de la Fonction publique et de la Réforme administrative*. Representatives from the Information Society Service are expected to join.

Lithuania reported that transposition is on its way and that the relevant laws will be mandated during spring 2005. Public sector information is already available for re-use free of charge under the current regime.

Ireland (Ministry of Finance) has proposed changes to their secondary legislation. Consultations are ongoing. There are some outstanding issues related to existing freedom of information acts. Request from local government to offer central guidance on pricing issues is under consideration

Iceland will amend the Information Act with provisions on re-use of electronic content. At the moment it seems that only 6 to 8 governmental institutions/agencies will be affected by the directive.

Finland has experienced some delays in their implementation efforts due to other important activities. A working group is looking into different pricing policies and they expect a proposal to be ready by the end of the year on the principles on external re-use. New legislation is not deemed necessary. New laws recently put in place (1999) are up to date on the issues tackled by the PSI directive. One outstanding issue concerns copyright on governmental information and the extent to which the PSI directive implies a compulsory license.

Norway (Ministry of Justice) has published a report on the implementation of the directive and proposed minor changes to the existing access regime. More specific laws might require additional but minor changes. A final text is expected spring 2005.

Portugal said that changes are required in the laws governing access since these laws are not currently considering the concept of re-use. A proposal has not yet been put forward by the responsible ministries (The Ministry of Justice and the Ministry of Economics)

Slovakia is about to set up a working group under the Ministry of Justice and prepare an overview of the effects of the directive, in particular on the freedom of information act.

Slovenia will have a proposal ready by December. Other issues on the re-use regime in Slovenia were covered extensively in a separate session referred to below.

Spain (Ministry of Culture) reported that the situation has changed little since the last meeting of the Group in April. Particular attention is given to the need, if any, to specific solutions directed towards the regional level.

Sweden said that there is no need for additional legislation in Sweden, even if commercial re-use is not directly regulated by the existing access and re-use acts. They are currently looking into the development of licensing schemes and recognize the need for awareness raising initiatives to inform regional and local government. The practical implementation of the PSI directive is closely linked to other actions aimed at creating a more open society under different e-government initiatives.

In the **UK** draft legislation and guidance on its implementation will be available for public consultation in November. Different implementation regimes applying to different regions in the UK have given rise to some uncertainty, as well as other issues on the scope of the directive; level of granularity, the overlap with the freedom of information act e.g. The UK recognize the need for some type of awareness initiative to inform regional and local government on the effect of the directive.

3. WAYS AND MEANS OF IMPLEMENTING THE PSI DIRECTIVE

Mr. Ferrão (INFSO E4) introduced the issue of online licences by indicating this is just one of the means of making PSI available for re-use purposes. He pointed out that other legal mechanisms such as disclaimers and waivers, with or without use or re-use restrictions can serve the same purpose as a licence agreement. Not applying licence agreement might reduce overheads and make the implementation and use of PSI fast and easy. It also allows public sector bodies to focus on their core tasks rather than on monitoring licensing agreements (This is the approach in the US). Member States considering applying online licensing conditions should keep in mind that there are specific provisions of the PSI Directive which apply to the use of licences: they should not restrict the potential re-use of PSI (Article 8.1) and they should not restrict competition. Licences must also allow for contractual conclusion without delay (reasonable time limit), and any refusal to grant a licence must be substantiated. Charges must also be limited. Licences should neither discriminate comparable categories of re-users and be non exclusive. Standard licences are encouraged and they should be electronically available online for the purpose of transparency. In principle the same requirements apply to online as well as offline licences, with the exceptions of the provisions of the following directive relevant only to the use of online licences: Directive 97/7/EC on distance contracts), Directive 93/13/EC on unfair terms), Directive 2000/31/EC on electronic commerce and Directive 1999/93/EC on electronic signatures.

Click and use licences are standard form agreements containing pre-established terms and conditions', making them less suitable for family law, wills, real estate and other transactions requiring a public notary intervention. This type of licences also raises validity of "acceptance" issues. In his conclusion Mr. Ferrão pointed out that public sector bodies should carefully consider the need for licences and reduce conditions for re-use to those that are considered strictly necessary. In any case, licensing terms should be clear, comprehensive and specific.

4. POLICIES ON THE RE-USE OF PSI

a) Presentation by the Slovenian delegation

Slovenia has a very open and proactive policy towards access and re-use of PSI. Even if re-use is not the primary focus of the law on Access to Information of Public Character from 2003, it defines the general and relevant legal framework for the implementation and transposition of the PSI directive in Slovenia. This act broadly defines the term “Public bodies” and includes public institutions such as broadcasters, schools, archives e.g. It also applies to any document created or obtained by the public regardless of its form.

A catalogue of governmental information is available online. A centralized portal grants access to information from around 3000 public sector bodies, including laws, basic data, strategic documents, programs and studies. This portal also allows access to registers and similar databases.

To reduce the time it takes to get an approval from the public sector for re-use, specific individuals in the public sector will be officially nominated contact persons for different types of re-use. This will prevent public sector institutions from referring potential re-users of public sector information to other institutions when they receive request for re-use. A “Commissioner” for access to public sector information is proposed to deal with redress issues. Market behaviour of public sector bodies is one of several challenges facing the implementation of the directive. Documents often represent “own income” to some public sector bodies. They are aware that both discriminatory licensing practices and other exclusive arrangements were used in the past, but this will obviously change with the implementation of the directive. Other challenges concern the reluctance to nominate officials and to provide documents on-line.

The law on Access to Information of Public Character will be amended in the near future to tackle these issues. Mechanisms will be put in place to ensure transparency on contractual arrangements. Diverging principles on access will be consolidated. Certain penal provisions will also be amended.

b) Presentation by EPSINet. Re-use of PSI in Australia and USA

EPSInet is an accompanying measure under the eContent programme. Its aim is to contribute to the creation of conditions for more effective re-use and commercial exploitation of public sector information in line with the provisions of the PSI directive. The ePSIGATE web portal (<http://www.epsigate.org>) contains a variety of resources, including knowledge sharing guidelines (regulation, management, standards, performance) and services such as news and news alerts, a discussion forum and other advisory services targeted to the need of PSI stakeholders. In his presentation Rob Davids reported on the Australian and the US experience.

Australia is a Federal State under which the different states and territories are autonomous. They implement their own PSI policies only regulated by overriding competition rules on the federal level. The Australian Government Information Management Office (AGIMO) is the national body giving advice on Australian Government publication processes. They run web access points to public sector information resources and deal with any request for access and re-use of public sector

information. They receive about 1500 requests a year, all of which are treated manually with no use of “click-use” type licenses.

The Australian PSI policy takes as a starting point that PSI is paid for by the taxpayer and should be freely available to citizens and businesses. A cost recovery model exists, however, under which state and federal treasuries have encouraged public cost recovery since the early 1990s. This practice has not, however, led to an adequate rate of return as expected. (From the Bureau of Statistics, Archives and Registry of births, Death and marriage certificates, land and property information e.g.)

To illustrate recent developments in Australian PSI policy Mr. Davids gave an overview of the spatial information sector where a new spatial information policy was introduced in 2001 under which spatial data is made available at the cost of distribution. This has, among other things, resulted in prices on spatial data sets being dramatically reduced. In one instance the price of a data set was reduced from Aus\$40,000 to Aus\$ 99 overnight, leading to a higher demand. Data sets that are available on the internet are available for free. Copyright is exercised, even in the absence of revenues, the purpose of which is to monitor the use of spatial data sets and manage potential liability issues.

The market for spatial data has expanded and the number of users has increased as the result of this new policy. The rush to get content online has, however, uncovered problem areas that still need to be tackled. For instance, the government must pay more attention to the discoverability of data, namely the use and quality of metadata, and to the quality of the data itself. Since wider re-use also means “wider quality control”. It is also recognised that the development and implementation of standards for the exchange of data remain a key issue and that efforts must be made to improve data quality. A genuine national policy on pricing and licensing is being discussed at the federal and state level at the moment, along with mechanisms to coordinate efforts and ensuring the practical implementation of a re-use policy across multiple layers of government. This would also imply ensuring interoperability between governmental layers using specific projects and cases in selected vertical sectors of the government. In these discussions, federal government is debating whether the government should stop collecting spatial data all together and outsource data gathering to private companies.

At the end of his presentation, Mr. Davids referred to the US policy on re-use where PSI is free from copyright on the federal level and made available for the cost of dissemination. (A more detailed overview of the situation in the US was presented by Mr. Weiss at the meeting of the PSI Group in April). There are some complaints that budgetary survival leads to back door deals against the principles of this policy. At the moment, security concerns are also seen by some as reducing access. (A full report on the US situation is available on <http://www.epsigate.org>).

Mr. Davids reminded the Members of the Group to ensure participation from their country to the ePSINet Policy Conference on PSI in Athens in January 2005. Additional information on the conference is available at <http://www.epsigate.org>

5. RE-USE OF STATISTICAL INFORMATION HELD BY PUBLIC SECTOR BODIES

a) The view of the public sector: Presentation by Mr. Argueso from the National Statistical Institute of Spain

Mr. Argueso, Head of the Dissemination Division, presented the dissemination policy of the National Statistical Institute of Spain (INE) and their new online services. Following the introduction of the INE online service that allows individuals to make their own queries, use of INE statistical data has exploded. The INE service delivers 2000 tables a day to requesting customers and only receives, on average due to the user-friendly interface and the run time performance of their technical infrastructure, one helpdesk request a day. All data sets are available for free on the Internet, together with the conditions for its re-use. This includes detailed price lists on their tailor made services and their standard products in electronic format and paper. All standard products are inexpensive. For instance, the annual yearbook in paper format costs 25 Euro.

The users of the INE online service are mostly private companies (71%) but also public sector institutions (10%) and Universities (10%) are represented among their customers.

Data is stored on a central server and updated regularly. New data is released on the morning on the day of publication and available on the internet 30 minutes later. Paper publications are made available one month after the publication on the Internet, if paper publications are made at all.

Mr. Argueso demonstrated the INE online services on the data sets on the 2001 national population and housing census. This particular part of the INE system allows anyone with an access to the Internet the opportunity to make detailed inquiries. They may search all data fields and variables resulting from the survey and compose customized outputs adapted to their own needs. The INE online service does not give their customers a predefined list of tables.

INE is steadily increasing its total income resulting from request for tailor made services, even if data is freely available on the Internet. Charges for tailor made products and services include the cost of labour involved in the production of these products, but the supply of raw data from the public sector for the production of these tailors made services and products, is free. He pointed out that INE is obliged to deliver tailor made services since the application of privacy laws prohibit others from delivering the same service.

The INE site is very popular and was rewarded the best Spanish site on Internet award in 2001 and 2002.

b) The European experience: Presentation by Mr. Gunter Schaefer, Head of Unit: Information and Dissemination, EUROSTAT

On the 1 October this year EUROSTAT introduced a new dissemination policy granting anyone access to their data free of charge. This is a clear departure from their previous dissemination policy where data sets were made available on commercial terms to most re-users (Data was freely available only to the institutions of the union and to the suppliers of statistical data). The new policy supports the primary task of

EUROSTAT which is to collect statistical data from National Statistical Institutes in the Member States for further use in a European context.

There are many positive effects expected from the implementation of this new dissemination policy. The number of users is likely to rise 10 -20 times and lead to an increased re-use of statistical information. On the negative side this might increase the demand on the technical running of the service and result in, at least in a transitional period, more requests for help and assistance due to the many new users of the system that are unfamiliar with the implications of the re-use regime. Even if EUROSTAT is used to working with the different languages of the Union, language issues arising from the uptake of new member states might be particularly challenging.

EUROSTAT also expect that the new dissemination policy will have an organisational impact on its services. Procedures and co-operation mechanisms with Member States must be revised and feedback from users must be channelled into the system. As in Australia, EUROSTAT expects the new dissemination policy to lead to an increased focus on the quality of their data sets. They also believe that users will migrate towards the use of internet services and lead to lesser demand on print and paper publications.

c) The market view: Presentation by Global Trade Information Services

Pierre Goffinet from Global Trade Information Services, an information service provider, presented his company and their views on re-use of statistical information. GTIS employs 25 people and supplies statistical products and services on trade to a wide range of customers ranging from the private to the public sector. They collect raw data from national statistical bodies and other available sources of statistical information. The costs involved in obtaining data sets and continuously updating them varies from one country to another depending on their re-use policy. In general, acquiring data sets from the Federal Government in the US is usually less time consuming and less costly than from comparable sources in Europe (Before the implementation of the new EUROSTAT policy). Whilst a data set costs Eur 200 in the US, the price can range from Eur 1000 to Eur 3000 for comparable indicators in Europe. Mr. Goffinet also pointed out the lack of transparency on policies for re-use in Europe. The non-copyright regime applied in the US on the federal level makes it much easier from the private sectors point of view to acquire and re-use data sets. Mr. Goffinet explained that their business is based on their customers need for global information aggregation. That is why they also have public sector bodies among their customers preferring to pay for GTIS services, instead of using raw material from their own internal sources. Another contributing factor to the interest from the public sector is the speed at which they are able to update statistical information in the GTIS data model. GTIS data models are updated and made available 48 hours following the publishing of the raw material from the public sector.

6. AOB AND WRAP UP BY CHAIRMAN

Before closing the meeting, the chairman thanked everybody for the constructive participation and indicated that the next meeting of the PSI Group would probably take place in February/March next year.