

Results of the online consultation of stakeholders "Review of the PSI Directive"

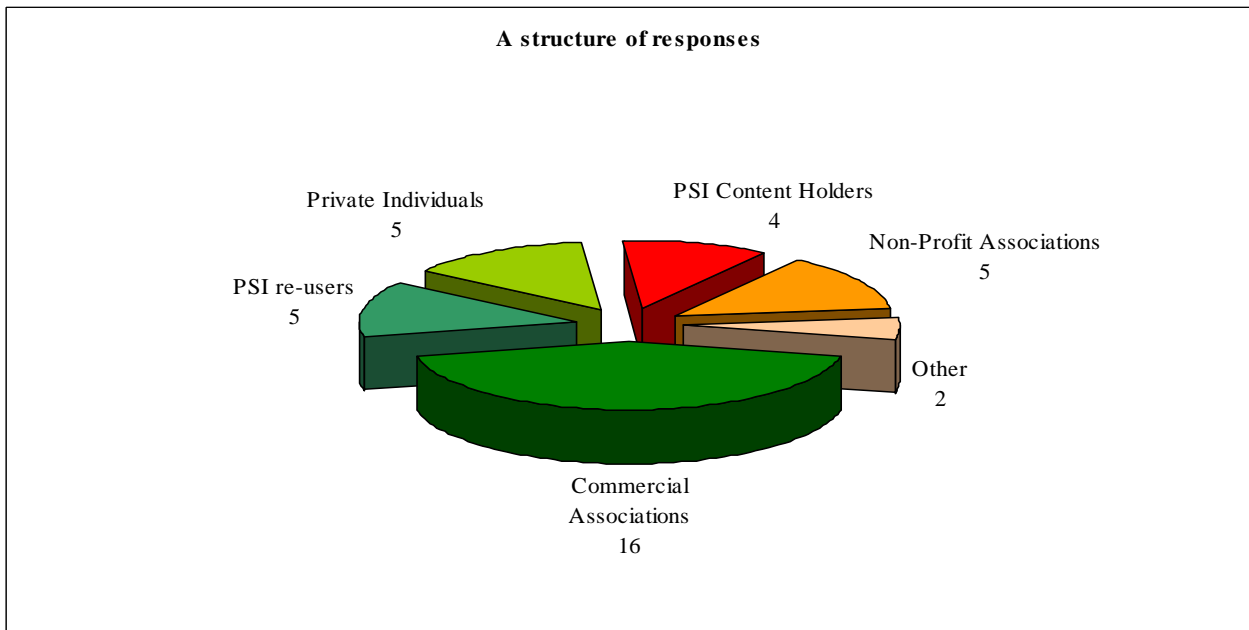
1. Background of the consultation

The purpose of this online consultation on the review of the PSI Directive was to gather information from as many sources as possible, including public sector content holders and commercial and non-commercial reusers (universities, NGOs) on their views on different aspects related to the implementation, impact and scope of the PSI Directive. The online consultation was launched on 16 May 2008 and closed on 15 September 2008. The consultation was published in the Information Society PSI Thematic Portal at: http://ec.europa.eu/information_society/policy/psi/index_en.htm and in the Commission's 'Your Voice in Europe' webpage¹.

In addition, relevant stakeholders were contacted through their associations or networks (e.g. Eurogeographics, Primet, ePSIplus, etc.) to inform them of the consultation and were invited to submit their views.

2. The replies to the consultation

The Commission received 37 responses to the stakeholders' consultation. These embrace the different actors present in the PSI value chain: content holders (governmental agencies), commercial associations, private firms, public-private and non profit associations, private individuals, and 2 others that do not fall into any particular category (a political party and a PSI thematic network).



¹ http://ec.europa.eu/information_society/tl/activities/consultations/index_en.htm#open_consultations

The responses from the different associations and other re-users cover to a considerable degree the different active sectors of the information reuse market. Input was received from important re-users of legal and administrative and business information and the main European publishing and broadcasting associations. The ICT industry associations in Germany, Austria and Italy, representing the interests of the operators in their respective markets, also provided their views. The response of the PSI Alliance, which represents the views of an important group of private sector companies and associations active in the PSI field, should also be noted. Finally, the contribution of the ePSIplus network takes stock of a large consultation process through their network of stakeholders and national correspondents.

3. General overview of the replies

Overall, respondents have signalled that the Directive has had a positive effect on promoting PSI reuse in their respective countries by providing and establishing a legislative framework in a previously unregulated market.

However, diverging views exist between public sector bodies (the supply side) and reusers (the demand side) on the PSI current reuse environment. While the former group considers it satisfactory and working well, reusers are more critical and consider that the implementation of the Directive has been much too slow. Some respondents go further and state that it has been neither properly implemented nor applied in the Member States. A majority of respondents consider that important barriers remain that would need to be addressed to fully exploit the PSI re-use potential in the EU. The problems that have been frequently signaled are lack of awareness of the potential of PSI reuse and of the Directive amongst public sector bodies, especially at regional and local level, little effort from public bodies for facilitating and promoting reuse, lack of knowledge or mechanisms to identify what information is available for re-use, the non mandatory requirement for PSI re-use, strict licensing conditions imposed by public sector content holders, the limits of the public task when public bodies commercially compete with private firms, unfair competition practices by public sector bodies, very limited transparency on public bodies reuse policies and notably on the way charges are calculated and, the absence of efficient means of redress in most countries.

As regards the impact of the Directive on the charging policies practised by the public sector, the overwhelming majority believes that the implementation has hardly had any impact on the pricing of PSI, although some laudable exceptions have been signalled.

A significant group of stakeholders expressed their support for extending the scope of the Directive to cultural, research and broadcasting institutions, as it conceived that it will have an impact in developing the content market in Europe. However, specific stakeholders (basically associations) representing the views of the so called excluded sectors expressed the views against an extension of the scope, signalling the high administrative burden they would have to incur to comply with the Directive, and pointing out that in addition most of the content they hold would in no case fall into the scope of the Directive since it has third party copyrights. The envisaged mechanism proposed by the High Level Group on Digital Libraries in its Public Private Partnership report² was mentioned as a way forward by some respondents. These institutions

² http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/reports/ppp/ppp_final.pdf

would be kept out of the scope of the Directive, but would aim to abide to the principles and spirit of the PSI Directive.

The bulk of the responses from reusers suggest legislative amendments to the Directive to make it "sharper" and "tighter" in its obligations for public sector bodies, which enjoy great flexibility in the current legislative framework. The suggestions range from making the obligation for allowing PSI re-use the norm, imposing marginal cost pricing, requiring the establishment of independent regulators in Member States and/or dispute resolution mechanisms and, introducing greater clarifications of the public tasks of public sector content holders. In addition respondents suggested the implementation of national asset lists/repositories and the obligation for Member States to report annually to the Commission on their actions towards promoting PSI.

Finally, it was strongly recommended the issuance of guidance on specific terms of the Directive which are, to their understanding, very ambiguous, such as the definitions of "public tasks" and "document" and the concepts of "marginal cost pricing" and "reasonable return on investment".

4. Replies to the individual questions

The following overview, based on the replies to the 6 individual questions of the consultation gives an indication of the types of comments and ideas brought forward in the submissions. For reasons of clarity some of the comments have been regrouped, even if they were submitted in relation to different questions.

i) Implementation and impact of the Directive

4. 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.

Most of the respondents found the Directive to be beneficial for the market in a number of ways as it applied pressure on PSI producers to make information available and has given PSI re-use a greater prominence on the political agenda. However, almost all of the respondents have signalled that they face substantial problems when they intend to re-use PSI.

Many have underlined that information they are interested in, is either not available for re-use, or cannot be found. Many submissions claim that the licensing conditions imposed on re-users are often too restrictive and non transparent. Many respondents signal that charges for PSI remain too high and they are unaware on which basis prices were calculated.

A lot of the respondents have highlighted problems when competing commercially with public sector bodies, and notably when the latter is undertaking a statutory public task. Many respondents think they compete on unequal terms with the public sector body concerned, believing that limits

and boundaries should be established on the role/limit of public bodies operating commercially in the market, and claim for greater transparency in these cases.

Some respondents mention the fact that the lack of information registers (asset lists), or their limited scope, is limiting any potential development of the market. And even when the information is accessible, it is in practice not available for re-use. The availability concern also refers to the fact that there are no specific time limits being implemented in certain EU countries for facilitating PSI, and that responses from administrations to PSI re-use requests is slow.

The replies to this question contain a part concerning competition, which often refers to point 4.2 – charging policy. Therefore the competition issue was moved to point 4.2.

4. 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?

Overall, the view of stakeholders is that the Directive has had a limited impact in the charging policies of public sector bodies. Although a couple of examples were signalled (e.g. BEV Austria), respondents have signalled that the high prices charged for PSI may be limiting the economic development of particular sectors. Moreover, they express concerns that the existing legal framework allows for high pricing as the provisions of the Directive regulating charging allow for a very flexible interpretation of the term "reasonable return on investment", in addition of cost recovery. Some respondents also mentioned, that even when charging policies have been revised, there is no direct evidence that the Directive was a primary factor of these changes.

A very minor set of re-users indicate that the pressure on PSI producers to make information available causes a stable trend to make more information accessible via internet and in some cases to deliver it for free. They consider the Directive the driving force behind these changes.

ii) Scope of the Directive

4. 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?

It is generally recognised by respondents that cultural establishments, education and research organisations and public broadcasters produce or are in possession of valuable public information with a considerable re-use potential.

A significant group of stakeholders expressed their support for extending the scope of the Directive to include information held by cultural, scientific and broadcasting institutions. It is conceived that it will have an impact in developing the content market. However, specific interested stakeholders (basically associations), representing the views of the so called excluded sectors, expressed their views against an extension of the scope, signalling the administrative burden that they would incur would be considerable and stating that most of the content they hold would in no case fall into the scope of the Directive since it has third party copyrights.

Representatives of broadcasters also indicated that for subsidiarity and competence reasons, the Commission should not propose broadcasting institutions to fall within the scope of the Directive.

The envisaged mechanism proposed by the High Level Group on Digital Libraries in its Public Private Partnership report was mentioned as a way forward by some respondents. These institutions would be kept out of the scope of the Directive, but would aim to abide to the principles and spirit of the PSI Directive.

4. 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?

See above (4.3)

iii) Looking ahead

4. 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)?

The answers suggest that at present the focus should be placed towards facilitating re-use. Many technical, legal and practical measures have been suggested and identified by respondents:

Technical measures: introducing metadata and identifier standards for facilitating improved discovery services, developing asset registries/information portals, and making PSI available in such a way to make full use of the web 2.0 /semantic web techniques.

Legal measures: A significant set of respondents argue that the establishment of an Independent Regulator (a neutral organization in every Member State) is paramount to oversee the correct implementation of the Directive. This body should ideally have powers to enforce the law, supervise the redress mechanisms, ensure the correct application of pricing schemes, etc. In addition, re-users expect efficient and economically viable redress procedures to be put in place.

Practical/Organisational: A common view of the respondents is that the public information available for re-use should be more visible. In addition to developing national asset registers, it has also been suggested that public sector bodies should nominate a contact person who would be responsible in their respective institution for PSI re-use issues (e.g. as in France). Similarly it has also been highlighted a need for a collective approach from the Commission's side as regards different but closely associated policy initiatives (PSI, INSPIRE and access to environmental information Directives, SEIS - Sharing environmental information system, eGovernment, etc). At national level, several respondents would welcome the appointment of a PSI central body, with coordination and regulatory responsibilities.

Monitoring: intensify studies in this area by defining and collecting reuse indicators across the different sectors and Member States, as well as carrying out economic studies on different reuse charging models so as to gather convincing evidence for policy action.

A significant group of re-users express a need for some sort of guidance from the Commission, especially concerning the clarification of the meaning of some terms of the Directive which they consider to be ambiguous. These include the definitions of "document", "public task", "re-use" itself, "reasonable return on investment", etc.

4. 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?

The bulk of the reusers' responses suggest making legislative amendments to the Directive to make it "sharper" and "tighter". They believe the Directive needs to be re-worded to make it more stringent and reuse more enforceable. A few submissions considered that it is too early to change the current legal framework, that there is insufficient experience from current implementation to support amendments to the legislation and that current efforts should be focused on awareness and take up of the Directive's provisions by the public sector and industry, and the Commission should reconsider a proposal at a later stage.

The suggestions to be introduced range, from making the obligation for allowing PSI re-use the norm (any refusal should be a duly justified exception), imposing marginal cost pricing, requiring the establishment of independent regulators and/or dispute resolution mechanisms, to introducing greater clarifications on the public tasks of public sector content holders.