

Minutes of the 19th meeting of the Public Sector Information Group,

Luxembourg, 10 September 2014

I. Welcome and introduction

Márta Nagy-Rothengass (EC) welcomed the participants and introduced the EC team.

She then set the policy context of the discussion on reuse of public sector information by the wider debate on Big Data and data as a driver of innovation (see also [PowerPoint slides](#)). She explained that the Commission has recently adopted a policy document (Communication) on this matter (see [COM\(2014\)442 of 2 July 2014](#)). This policy document sets out the strategy to tackle the following challenges: Lack of scale in R&I efforts in the EU, delays in the implementation of (big) data technologies in industry and public administration, a shortage of skilled labour in the area of (big) data, problems with access to data infrastructures and tools and legal challenges when accessing or reusing data (data protection, copyright). The aim is to achieve the creation of ecosystems around data independent of the geographical proximity of actors inside the EU. In order to respond to the challenge, the Commission will undertake a wide number of actions as set out in the Communication, mainly a contractual Public-Private Partnership on data that should coordinate public and private research funding, determine lighthouse projects for Big Data, establish collaboration (innovation) spaces for experiments with data and report on legal challenges faced. A Memorandum of Understanding between the Commission and stakeholders, setting up the Public-Private Partnership will be signed shortly.

Fostering the reuse of publicly available data is one key activity which has been going on for many years. The participants are therefore encouraged to collaborate actively with the Commission services on fostering reuse, but also to connect with colleagues in other government departments at home on using public data resources as one driver of innovation.

During the discussion, Márta Nagy-Rothengass clarified that the Commission sees more and more business data becoming open data, e.g. in the energy utilities sector. What is important here is to respect data protection and commercial confidentiality. This is why one element in the Public-Private Partnership is to establish innovation spaces as an environment of trust within which data can be reused.

II. Helping implement the PSI Directive: Commission Notice 2014/C 240/01 (on standard licenses, datasets, and charging)

Szymon Lewandowski (CNECT G3, Policy/Legal officer) presented the main elements and objectives of the recently adopted [Commission Notice 'Guidelines on recommended standard licences, datasets and charging for the re-use of documents'](#) (see also [PowerPoint slides](#)). Following a consultation process which involved the input of the PSI Group members,

civil society and commercial re-users, the guidelines were adopted on the 17th of July 2014 and are now published in 23 EU official languages in the EU's Official Journal.

Mr Lewandowski explained that in addition to the guidelines' main role of helping the Member States in the correct and consistent transposition of the amending Directive 2013/37/EU, their wider aim was to provide a practical toolkit for the national administrations in their daily management of PSI re-use.

It was stressed during the presentation that the Commission counts on the Member States to further disseminate and promote the use of the guidelines within the public sector bodies at all levels.

Portugal welcomed the guidelines although it would have expected some more detail. It invited the Commission to make them known as widely as possible. The Commission explained the policy of limiting the content of Commission documents so as to keep translation costs reasonable. It pledged to use all channels to promote the guidelines, including through the [ePSIplatform](#) it funds for this purpose, the EU delegations and presence of Commission officials at carefully selected events, reflecting the limitations on the Commission travel budget.

The discussion allowed the Commission to clarify a number of issues:

- The guidelines are not a binding instrument. As Recital 36 of Directive 2013/37/EU ('the amending Directive') calls on the Commission to 'assist' Member States with the implementation of that Directive through guidelines, the guidelines – insofar as the concern aspects of the Directive – will be taken into account, respecting their 'guiding' character.
- A number of questions related to personal data. The UK took the view that personal data are outside the scope of application of the Directive. The Commission on the other hand explained that the PSI Directive as such does not contain a prohibition of the re-use of personal data but instead refers to the applicable national access regimes as well as to EU and national legislation on the protection of personal data, which may indeed exclude such data from access and/or re-use. In that context, article 1 (2) (c) (cc) of the revised Directive states that there may be documents that are not accessible under national access to documents legislation for reasons of data protection, but that there may also be documents that are at least partly accessible (this is the case at least for the Netherlands). For those documents, a prohibition of reuse needs to be defined by law which can be through statutory legislation or judicial precedent but cannot be merely left to the discretion of the public sector body itself. The UK furthermore highlights that non-transactional licences such as the UK Open Government Licence (OGL) are not useful with respect to reuse of personal data as they are unilaterally set by the licensing authority and therefore cannot take

into account the specific reuse sought, thus making it impossible to ascertain whether such intended reuse is compatible with the purpose of collection of the data (or the consent given on uses by the individual). Consequently the UK OGL does not cover reuse of personal information.

Malta observed that it may soon face a problem, given that under MT legislation certain personal data from the birth register are accessible to third parties – and this data might now have to be made re-usable. The EC's answer was that in line with Article 1.2(cc), the Maltese legislation may be amended to make sure that the re-use of such data is forbidden.

- The limitations of opening up data due to questions of personal data was in particular discussed based on the example of the company register- a point brought into the discussion by Croatian delegate, who emphasised the complexities of opening up for re-use the full datasets (including personal data) of companies registers. The Commission noted that technological solutions limiting the display of certain datasets would in such cases be the most appropriate to ensure compliance with personal data legislation.

Norway appears to take the approach of only partially opening up register information so as to not make reverse searches by names of persons possible, something that is virtually impossible through traditional manual searches of individual company records, but relatively easy to do once the data is analysed by a machine. Reverse searches could be justified by the need to have transparency on ownership, including ownership of individual persons. The Commission indicated that the practical interplay of privacy and PSI re-use legislation is a topic which warrants a separate discussion, likely to be followed in the context of the future PSI Group meetings.

- The question of whether data are owned by the public administration or are private data needs to be carefully assessed. Data subject to third party rights are outside the scope of application of the PSI Directive. This emphasises the importance of information management processes, leading up to the release of datasets for re-use.
- Liability disclaimers are an important tool to limit potential disputes for such data for which the public administration in question does not wish to warrant for in terms of completeness, accuracy and up-to-dateness. Otherwise the number of data resources opened up will remain limited for fear of law suits resulting from imperfect data. Liability issues can equally be dealt with inside or outside the licence proper.
- Article 11(4) is one of the more difficult provisions of the revised Directive. The importance is that all existing exclusive agreements that cannot be justified in order to facilitate the offering of public services based on specific data resources through

private market actors and at the same time limit the cost for the taxpayer by allowing the private actor to exclusively use the data resources in order to recover part of its investments, terminate after 30 years. That should give ample time for the parties concerned to adapt to the new legal scenario.

III. Transposing the revised PSI Directive – update from MS

UK

- State of the legislative procedure: Governmental draft under preparation; public consultation on-going;
- Main challenges:
 - At the time of the negotiations the UK government did not want the revised PSI Directive to be too prescriptive. Now it finds that the Directive could be clearer on some points;
 - The challenge in the transposition is that questions on reuse of public sector information are dealt with by a number of other areas of law, namely the law on access to information, data protection law, copyright law.
 - The correct choice of the redress mechanism is one of the key discussions and the discussions still include a number of options; a public consultation should give feedback on this; autonomy of the UK Parliament vis-à-vis governmental agencies and the courts of law needs to be respected;
 - Enhanced levels of parliamentary and government scrutiny add to the time needed for transposition;

- Other information items:

The Freedom of Information Act 2000 (England, Wales and Northern Ireland) was amended in 2012 and introduced a “right to data”.

Sweden

- State of the legislative procedure: Preparation of government draft; public consultation took place;
- Main challenges:

Charging rules
- Other information items:

- The Swedish meteorological and hydrological institute abolished charging for the reuse of its data; the loss of income is made up for by streamlining the operations of the agency and the disappearance of accounting costs for charging;
- [Three museums](#) have created an agency under the Ministry of Culture and allow free reuse of their data based on a [VINNOVA](#) grant to digitise and publish.
- Sweden has also initiated an exercise linked to the reporting obligations under article 13.2 of the revised PSI Directive: an assignment covering national and local authorities – to follow up the PSI implementation. The final report from this exercise will be available in January 2019.

The Netherlands

- State of the legislative procedure: Government bill approved on 5 September, now in the Council of State. Parliament to vote early 2015.
- Main challenges:
 - NL distinguishes between Open Data ('the proactive publishing of data by public sector bodies') and reuse of PSI ('public sector bodies react to requests for reuse); the new Dutch law will not contain obligations on public sector bodies to pro-actively publish data;
 - How to ensure that licensing conditions are passed on downstream?
 - Could licensing conditions also impose on downstream reusers to charge at a certain level, so as to ensure that charges of public sector bodies depending on own income are not undercut by the downstream reuser offering products containing such data at a cheaper price?
 - With respect to restrictive conditions the ambition is to limit the possibility of too restrictive conditions (on the amount of data, obligations on users to register, time-limits for reuse) to only such restrictive conditions that are 'justifiable';
 - Defining 'cultural institutions (libraries, museums and archives) is not as clear as it may appear.
 - Machine-readable formats are not easy to implement; future IT procurement as a focus to ensure that public administrations produce open, machine-readable formats.

- An evaluation of financial and organisational impacts will be foreseen;
- Is information enriched by third parties reusable?
- What is the practice and approach in other Member States with respect to exceptions under article 6(2) of the PSI Directive? In the NL the main bodies making use of this exception will be the cadastral authority and the authority managing the business register.
- What is to be understood by 'substantial part of their income' as in article 6(2)(a)? The NL take the view that it would not need to be necessarily a part of more than 50%.

The Commission encouraged the Member States to provide information on the approach taken in this respect, given that the Commission is not in a position to lay down a ready list of institutions liable to fall under the abovementioned provision.

Greece

- State of the legislative procedure: A draft bill was submitted to public consultation and is now discussed inside the government; Greece points out in this respect that some elements of the revised PSI Directive were already law in Greece since 2007, in particular the link between the right of access and the right to reuse public sector information; Greece points to the Diavgeia (transparency) portal pro-actively publishing government information as a way to ensure government transparency and the Greek [open data portal](#), building on the EU-funded [ENGAGE project](#).
- Main challenges:
 - Providing open data by default: Greece aims to oblige all public sector bodies to pro-actively make data available after six-month period of verification of data;

Belgium

- State of the legislative procedures: At federal level not much progress due to the absence of a government after the last elections; a legislative proposal is planned for December 2014.

At regional level the picture is disparate. Flanders appears to be relatively advanced.

Bulgaria

- State of the legislative procedure: The draft law is about to be finalised; a public consultation will start by the end of September 2014; introduction into Parliament is planned for beginning of 2015;
- Main challenges: rules on charging and rules on redress mechanism. Methodology for determining the fees will be prepared taking into account the Commission's Guidelines on charging. For now, the approach taken is that of providing data for re-use at zero charge. No complaints have so far been formulated in relation to this proposed pricing principle.

Germany

- State of the legislative procedure: Inter-service discussions on a draft amending law currently being discussed; a public consultation on a draft already took place;
- Main challenges:

Links between access to and reuse of documents; freedom of information requests are considered to be resource-intensive for public sector bodies and therefore not very popular; legislative competence on access to information is divided between Länder; this may impact on legislative process; no final decision taken yet.
- Other information items:

[Germany's G8 Open Data Action Plan](#) is due for publication;

Ireland

- State of the legislative procedure: A draft has been submitted for public consultation; some discussion on the type of instrument to be used; deadline will be observed;
- Other information items:

Ireland may combine the transposition of this directive with other legislation being prepared in the area of data sharing and possible measures linked to the implementation of the National Action Plan drawn up on foot of joining the Open Government Partnership.

Spain

- State of the legislative procedure: A draft is being discussed at inter-service level; the ambition is to complete the legislative process before Parliament is going into recess in June before the 2015 elections. Complicated process also due to the involvement of different departments on one hand and on the other hand, before sending it to

the National Parliament, regional and local administrations as well as private sector, have to be heard.

- Main challenges:
 - Organisational challenges: Internal restructuring in the lead government department; parliamentary elections in 2015;
 - Definitions; licensing;
- Other information items:
 - Private sector very active in PSI reuse;
 - A recent Spanish report on reuse of PSI shall be shared with the Commission;

Croatia

- State of the legislative procedure: Is at an early stage; some provisions of the revised Directive were already included in the new legislation that Croatia adopted as part of the accession process;

Target for adoption is April 2015;

- Other information items:

An Open Government portal should be running from Jan 2015 onwards.

Latvia

- State of the legislative procedure:

Parliamentary elections were held; parliamentary activity should resume in November. It is intended to present the new law then.

Lithuania

- State of the legislative procedure: A draft law shall be introduced into Parliament in spring 2015.

Luxembourg

- State of the legislative procedure: A draft law is currently being prepared; it will cover access to and reuse of information;
- Other information items:

- Fostering reuse of PSI is part of the Digital Luxembourg strategy that was announced in June 2014. It is designed to be an enabler for the entire economy and inspired by the Digital Agenda for Europa of the EU;
- An open data portal should also be developed;
- Public sector interest in reusing PSI is still quite low;

Hungary

- State of the legislative procedure: Draft law is currently subject to public consultation; it should be introduced into Parliament early 2015; deadline should be kept;
- Main challenges:
 - Including the cultural institutions;
 - Redress mechanism;
 - Licensing; Hungary intends to move towards CC0;
 - Formats;
 - Organisation challenges: Responsibility is now divided between two government departments and the PM office;
- Other information items: Hungary sees as certain uptake in PSI reuse, mainly with respect to meteorological and transport data;

Malta

- State of the legislative procedure: Draft bill should be introduced into Parliament by April 2015; it will be a separate piece of legislation (rather than an amendment of the European Union Act)
- Main challenges:
 - Introducing obligations on public sector bodies to pro-actively publish data
 - Machine-readable formats;
 - Federation of content of existing data portals;
- Other information items:
 - A Data Governance Council has been established and will steer the transposition of the new Directive;

Austria

- State of the legislative procedure: Legislative needs to be amended at federal and at Länder level (9 Länder); draft law at federal level currently in inter-service discussion; target is to introduce law into Parliament in Q1 2015. Also for the Länder level, work appears to be on track.
- Main issues are currently at the technical level: good quality metadata and formats;
- Other information items: Austria plans to re-launch its open data portal.

Poland

- State of the legislative procedure: A draft is being discussed since autumn 2014; a public consultation took place in May 2014; target is to have a final draft by the end of the year and then introduce it into Parliament in Q1 2015.
- Asks about the meaning of the second half of Recital 9: Application of the PSI Directive to documents that originally were under a third party right, but are now held by a library, museum or archive: What is the relation with the revised article 3.

Reply by the EC: With regard to their IPR status, we need to distinguish two sets of documents held by cultural institutions and subject to article 3:

A) Documents in the public domain (i.e. documents never protected by copyright or those for which copyright has expired) which are fully reusable under the general principle of Art. 3(1), and

B) Documents for which the library, museum or archive holds the IPR and which are subject to the provisions of Art. 3(2) of the revised PSI Directive (i.e. they shall only be made available for re-use if the cultural institution so decides, but once the re-use is allowed, the cultural institution will have to comply with the obligations of the Directive).

It goes without saying that documents held by cultural institutions but covered by 3rd party IPR are excluded from the scope of the Directive (Art. 1.2(b)).

The second sentence of recital 9 appears to suggest that documents whose IPR has been acquired by the cultural institution from third parties should be treated as covered by 3rd party IPR and therefore excluded from the scope of the Directive. In fact, the second sentence stresses that 3rd party IP rights on documents held by cultural institutions should be respected even in cases where identifying the right holder is difficult (circumstances in which such works can be used are normally covered by Directive 2012/28/EU – the Orphan Works Directive). The Commission is of an opinion that recitals cannot undo the operational provisions in the body of a Directive and in this case the application based on the literal reading of article 3 seems the best way to ensure the objectives of the PSI Directive.

Therefore, the second sentence of recital 9 should rather be interpreted as encompassing only those situations in which cultural institutions physically own copies of documents, which are still protected by copyright but the right holders of which are unknown (orphan works).

Portugal

- State of the legislative procedure: Well on track.
- Other information items:
 - Portugal will use the transposition of the Directive as a tool to raise awareness about the opportunities of open data/ reuse of PSI – also within the different levels of government;
 - Open data portal in operation since 2011; additionally a transparency portal for local government organisations recently launched;
 - Portugal is preparing a National Action Plan in the context of the Open Government Partnership process;

Romania

- State of the legislative procedure: A draft bill is currently submitted for public consultation (to end in December 2014);
- Main issues: Choosing the appropriate authority for redress;
- Other issues:
 - An open government licence based on Creative Commons (CC BY) was launched last year;
 - There is growing interest in open data, but reuse remains low;
 - Romania wonders whether a public domain dedication for government-owned documents is appropriate or even possible as the document will be always be owned by the government authority. Consequently, a licence always needs to be attached.

EC reply: That depends on the national situation. National law may well foresee that government documents are in the public domain.

Slovenia

- State of the legislative procedure: Full transposition is planned for early 2015; some elements such as the 'impartial review body' already exist in Slovenia (Information Commissioner's office);
- Other information items:
 - Two important conferences on PSI reuse with EC participation in autumn 2013;
 - Slovenia uses CC BY 4.0 as a standard licence;
 - An open data portal is running since July 2013 and will progressively filled with more data;

Slovak Republic

- State of the legislative procedure: A draft bill will soon be submitted for inter-service consultation. Presidential elections delayed the process. The draft bill has already been submitted to public consultation.

Finland

- State of the legislative procedure: A draft bill should be ready by the end of 2014;
- Other information items:
 - A national open data portal should be opened in the coming days; it will use CC 4.0 licensing suite;
 - A dedicated government seminar will look at open data.

Norway

- State of the legislative procedure: A public consultation on a draft bill should be launched soon;
- Main challenges:
 - Charging in the cultural sector
 - Definition of marginal costs
 - Formats
 - The redress mechanism
 - Licensing – possibly Norway will switch to the CC schema.

- Other information items:

Recently the company register was opened for reuse and this resulted in a huge increase in reuse.

IV. Licensing of PSI in Europe: Results of ISA comparative study

Ms Leda Bargiotti (PwC) presented the results of a comparative study on open data licencing across Europe. The study was undertaken within the [activities of the ISA programme](#) (Interoperability solutions for European public administrations) managed by the Commission's Directorate General for Informatics (DIGIT). The objective of the study was to gather an insight into the diverse practices with regard to the licensing of PSI in the EU, which range from following a clear policy and imposing the public use of licences that already exist and are well known (such as Creative Commons) to no guidance at all. The study confirmed that the multiplicity of approaches to licensing existed even within the same national administration, which limited the opportunities of sharing and re-using open data on a national and EU scale. It furthermore found that there was a limited awareness of the opportunities offered by standard licences. This in turn often led to the development of national licences based on false assumptions or ungrounded fears.

The study resulted in a number of recommendations directed to the Commission and national institutions alike. The main recommendation is to work on the assumption that a creation of a pan-European open data licence is not viable and that instead the objective of licensing interoperability (legal compatibility) should be pursued. In addition to the activities promoting a common approach to licensing across Europe, such as the recent adoption of the Commission Guidelines, technological solutions could be sought to automatize the process of licence comparison, application and drafting.

The full report from the study will be published after its validation by the Commission services, within a few weeks.

In reply to the questions from the floor, Ms Bargiotti clarified that the survey did not detect the possible reticence to licence out European PSI for re-use by non-EU companies. In this context, the Commission also emphasised the importance of close collaboration between state authorities and the private sector (to date, best practice examples include Spain and the UK) in order to raise awareness of the potential of PSI and to encourage its commercial exploitation.

V. Conclusions

The meeting's chair summed up the event by highlighting the overall positive picture drawn by the national delegates – both in terms of the advancement of the transposition of the revised PSI Directive as well as in terms of broader activities in the area of Open Data.

The chair also encouraged the participants to the meeting to use the ongoing process of implementing the new rules into national legislation as a springboard for initiatives that raise awareness and promote the benefits of PSI re-use.

Finally, the Commission encouraged the experts to report in the future on instances of interaction/collaboration with the private sector in the Member States. Any initiative that can serve as a basis for more structured dialogue between the government and PSI re-users (such as the US' [Open Data 500](#)) is likely to provide a stimulus for a wider update of PSI across the market and is considered a crucial complement to the updated legal framework.