



97th plenary session, 8-10 October 2012

**OPINION
of the
Committee of the Regions**

**REVIEW OF THE DIRECTIVE ON RE-USE OF PUBLIC SECTOR
INFORMATION and OPEN DATA**

THE COMMITTEE OF THE REGIONS

- welcomes the Commission's initiative to review the *Re-use of public sector information* (PSI) Directive and the accompanying Communication on *Open Data*, as they have the potential to become valuable assets for citizens, businesses and public authorities and could help to create jobs and improve the quality of public services;
- has emphasised the importance of having common rules and practices governing the re-use and exploitation of public sector information to ensure that the same basic conditions are applied to all players in the European information market, that conditions for re-using such information are more transparent, and that distortions of the internal market are eliminated;
- notes that local and regional authorities are among the main target groups for measures under the Digital Agenda, which include the revision of the PSI directive and the Communication on *Open Data*, and that they play a particularly important role in driving its implementation;
- considers it important that the re-use of public sector data fully respect EU and national privacy legislation. The use of open data must also respect the intellectual property rights of third parties, at the same time as ensuring that the same data protection and privacy standards apply to a situation in which public sector data is used for commercial purposes as when such data remains within the public sector.

CDR626-2012_00_00_TRA_AC

Rapporteur

Anne Karjalainen (FI/PES), Member of Kerava City Council

Reference documents

Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/98/EC on re-use of public sector information
COM(2011) 877 final

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on *Open data: An engine for innovation, growth and transparent governance*
COM(2011) 882 final

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

Introduction

1. welcomes the Commission's initiative to review the *Re-use of public sector information* (PSI) Directive and the accompanying Communication on *Open Data*, as they have the potential to become valuable assets for citizens, businesses and public authorities and could help to create jobs and improve the quality of public services¹;
2. notes that the purpose of the current PSI Directive, which was adopted in 2003, was to facilitate commercial re-use of public sector information throughout the Union by harmonising the basic conditions for facilitated re-use. The PSI Directive also contains provisions on non-discrimination, charging, exclusive arrangements, transparency, licensing and practical tools to facilitate the discovery and re-use of public documents. Cities and regions are simultaneously actors and providers in relation to such documents;
3. points out that in its 2011 Communication on *Open Data* the Commission notes that, despite progress made, a number of barriers still persist to the use of public sector information, such as failure to see its economic potential, lack of information on available PSI, technical and practical issues hindering re-use;
4. observes that the review of the Directive forms part of the Digital Agenda for Europe, which itself is part of the Europe 2020 strategy to turn Europe into a "smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion"²;
5. emphasises that Europe's biggest challenge in the near future will be to generate economic growth while promoting sustainable development. There is an opposition between these objectives, which is addressed in the Europe 2020 strategy by making sustainable development a top priority. Sustainable development means development that meets the needs of modern society without making compromises that will be paid for by future generations. The digital economy has the greatest potential to generate sustainable growth³;
6. has highlighted the importance of re-using public sector information for both commercial and non-commercial purposes, and investing in research to support specific activities and the development of future applications to enhance the value of the ICT domain⁴;

¹ CdR 247/2009.

² CdR 104/2010.

³ Idem.

⁴ CdR 247/2009.

7. has emphasised the importance of having common rules and practices governing the re-use and exploitation of public sector information to ensure that the same basic conditions are applied to all players in the European information market, that conditions for re-using such information are more transparent, and that distortions of the internal market are eliminated⁵;
8. notes that local and regional authorities are among the main target groups for measures under the Digital Agenda, which include the revision of the PSI directive and the Communication on *Open Data*, and that they play a particularly important role in driving its implementation⁶;
9. observes that public bodies produce, collect and hold a wealth of information and content. Public sector information is an important raw material for digital content products and services, and its considerable potential in the European Union has not yet been fully exploited;
10. points out that, in order to develop a market for the reuse of PSI, it is necessary to review exclusive agreements by public sector bodies and private firms and to implement policies that apply licensing and charging models to facilitate and optimise the re-use of PSI, while ensuring that there is funding to preserve and update documents. It is also important to consider and clarify how mechanisms, many of which are already used for the management of public data, can be organised so as to ensure maximum consistency, thus enabling major synergies⁷;
11. believes that it is essential to determine a way of objectively measuring the economic value of information, given its public nature and connection with public authorities⁸;
12. stresses that the full potential of public sector information re-use could be reached with closer involvement of LRAs, which could significantly contribute to promoting public sector information re-use, thereby improving conditions for businesses and creating jobs⁹;
13. encourages policy-makers at local and regional level to consider how local and regional authorities can promote open public data and re-use of information;
14. considers it important that the re-use of public sector data fully respect EU and national privacy legislation. The use of open data must also respect the intellectual property rights of third parties, at the same time as ensuring that the same data protection and privacy standards

⁵ Idem.

⁶ CdR 104/2010.

⁷ CdR 247/2009.

⁸ Idem.

⁹ Idem.

apply to a situation in which public sector data is used for commercial purposes as when such data remains within the public sector;

15. has stressed the need for involvement of local and regional authorities in a broad collaboration to improve the interoperability of government systems and make the provision of public services more effective¹⁰;

Principles of the Directive on re-use of public sector information

16. notes that the Commission's revised strategy for open public data is based on three mutually reinforcing policy strands:
 - adapting the legal framework for data re-use;
 - mobilising financing instruments in support of open data, and deployment actions such as the creation of European data-portals;
 - facilitating coordination and experience-sharing across the Member States.
17. notes that the reviews of the Directive introduce the principle that all public information that is not explicitly covered by one of the exceptions is re-usable for commercial and non-commercial purposes;
18. points out that the proposal, which expands the scope of the Directive to include libraries (including university libraries), archives and museums, should take into account the special purpose of such institutions, whose contents are accessible to the public; points out that extending the scope of the directive should minimise the possible financial effects and not impose a major administrative burden and significant additional expenditure on such bodies; underlines that, while cultural institutions should not be forced into digitalisation, the proposed method of setting charges over and above the marginal costs, should not undermine digitalisation and long-term archiving efforts of the aforementioned bodies due to high digitalisation and data storage costs and more limited money-earning options;
19. points out that the proposal also limits the amount that can be charged for public sector information, to not more than the marginal costs of producing and disseminating it, other than in exceptional cases where the public sector body generates a substantial proportion of the funding relating to the performance of its public service tasks from the exploitation of its intellectual property rights; proposes making it generally possible to also take PSI Directive compliance costs into account in setting charges;
20. notes that, under the proposal, the Member States are required to organise supervision by independent authorities of matters pertaining to re-use of public sector information; does not feel that such authorities are necessary as sufficient provisions already exist in the Member

¹⁰ CdR 10/2009.

States to ensure supervision of the public sector. The Member States must submit a yearly report to the Commission on the situation with re-use of public sector information and the procedures and measures to ensure this;

21. notes that the Commission intends to work together with Member States, public sector bodies and regional aggregators to establish a pan-European data portal that would give direct access to a range of datasets from across the EU, including the data available through the Commission portal;
22. urges the Commission to support measures to promote open public data in its funding programmes, taking local and regional government into account;
23. urges public bodies to publish data in machine-readable format where possible, but notes that the Directive will not require that all data be converted into machine-readable format; this should also be set out clearly in the recitals to the Directive;

Opportunities

24. believes that the re-use of public sector information benefits society as a whole. The development of new practices using linked open data is a step towards user-centric service processes. Other benefits can come in the form of innovative services, new business models and enhanced public sector efficiency¹¹;
25. notes that according to Commission studies, ready access to public-sector data boosts economic growth and creates new business opportunities, including for small businesses, regardless of their location. In this connection, participation in re-use by SMEs in particular should be encouraged and the necessary refinancing ensured for the production, storage and updating of public sector documents;
26. observes that re-use of public information and the importance of open data for businesses can have a positive impact on the development of an entire region;
27. notes that studies carried out by the Commission and other international studies support the view that the social and macroeconomic benefits of releasing public data resources for re-use are, at a conservative estimate, substantially greater than the loss of future sales revenues. However, targeted (support) measures from the European Union might be needed, enabling additional PSI tasks to be performed at a time of reduced revenues, given budgetary constraints now and in the foreseeable future;

¹¹ CdR 104/2010.

28. notes that the economic value of information depends on its content. Economic benefits and new innovations are produced in particular through combining information, e.g. geographical information with service information;
29. notes that the opening up of PSI for re-use will also have a positive effect on the transparency, efficiency and accountability of public authorities and contribute to citizen empowerment and promote democracy. The information will then be verifiable and transparent;
30. points out that open public data improves the knowledge on which decision-making is based and its quality, for instance in information-based decision-making in the transport, land-use and climate change spheres;
31. notes that open public data resources and crowd-sourcing provide a considerable opportunity for local media to present local decision-making in an understandable and interesting way;
32. points out that open public data also makes it possible to provide public e-services more cost-effectively and means that less duplicated information is kept;
33. emphasises that broad opening up of public data for re-use not only creates new business activity but gives public authorities the opportunity to develop their own systems and processes, and to develop interfaces between those systems;
34. notes that many products and services based on public sector information have a cross-border nature, and believes that it should be made easier for businesses to deliver services across the whole of the EU;
35. stresses that open public data helps to improve the conditions for an efficient digital internal market where consumers can be offered easy, safe and flexible access to legal digital content and services¹²;
36. notes that European citizens – both as consumers and entrepreneurs, and as workers in creative sectors and the information sector – benefit from the developing digital internal market and from the services and information products that open public data facilitates¹³;
37. points out that local public sector operators often do not have sufficient resources, know-how or funding to develop user-driven service innovations. Local and regional operators should therefore be supported and encouraged to optimise public sector data released for re-use to developers and businesses, including SMEs, thus providing new business opportunities and creating jobs, while at the same time potentially creating completely new digital services from which the local and regional public sector is also likely to benefit;

¹² CdR 104/2010.

¹³ Idem.

38. notes that securing the supply of natural resources and reducing the carbon footprint are key aspects of sustainable development, but that they constrain production-based growth. Europe's economic growth should thus be based on something other than increasing the production of consumer goods. Products and services that can be made and sold digitally can create growth with a reduced burden on natural resources; stresses, however, that an increase in digitalisation processes – not least because of demand for previously unrequested products and services – increases consumption of energy and of resources needed in the manufacture of digital media;
39. notes that open public data creates new ways of developing innovative digital business activity. As public authority information is increasingly being made available for re-use in machine-readable format, companies can develop and offer new types of service using that information. Information service interfaces and automated data verification reduce manual data storage and correction work;
40. emphasises that open public data can generate innovation not just from businesses, but also from public authorities, research establishments, the third sector and individuals;
41. points out that broader use of information produces economic and social multiplier effects and synergies, for instance through increasing the data sources available in research and education;
42. notes that open public data for re-use benefits tourism, making it easy to provide services and destination-specific information to tourists in their own language;
43. notes that re-use of available information helps to improve the potential for information and communications technology to enhance energy efficiency and thus the European Union's competitiveness, and to increase business opportunities at local and regional level¹⁴;
44. stresses that the innovation opportunities provided by open public data should also be taken into account when implementing the EU Horizon 2020 framework programme;
45. welcomes the fact that during the period 2014-2020, funding for the European e-service infrastructure for public data will come from the Connecting Europe Facility. When earmarking funding it is important to also take into account the needs of local and regional authorities and the challenges that opening up data resources for re-use creates for them;

¹⁴ CdR 65/2011.

Challenges

46. believes that where public sector bodies generate a substantial part of their operating costs relating to the performance of their public service tasks from exploitation of their intellectual property rights it is important that they be allowed to charge for the re-use of documents over and above marginal costs;
47. notes that local and regional authorities may still face problems in accessing, collecting, processing and re-using data produced by national authorities. Local, regional and national authorities should cooperate more closely so that open public data resources can be used efficiently;
48. believes that particular attention should be paid to what kinds of obstacles and problems have arisen for local and regional authorities and developers with using public sector information and what should be done to resolve these issues. It is also important that documents only have to be made available in machine-readable form and together with metadata where it is feasible and appropriate to do so;
49. points out that the technology needed to open up public data is already well advanced, but that at local and regional level this technology may not necessarily be well enough mastered and there may not be the tools required to find information available for re-use. There is also a lack of skills, which means that open public data is not used effectively enough in services provided to the general public;
50. notes that local and regional authorities, especially the smallest municipalities, do not necessarily have the resources or capacity to mount large-scale data accessibility measures, but need help with this task (guidelines and recommendations, replicable technical infrastructure, common data catalogues, financing, etc.);
51. notes that if open public data is completely decentralised, without any central management, it is harder for developers and businesses to develop applications based on such data;
52. notes that given the diversity of local and regional players in Europe, it may be difficult for developers to create replicable technical platforms and applications, and would recommend that Europe-wide projects be organised in which applications are developed and piloted in a coordinated way. An example of this is the CitySDK project, in which a number of European cities are cooperating in developing applications and sharing their experiences;
53. points out that once the foundations of open public data have been established and assimilated, maintaining it will not require so many resources as during the study phase. Training courses on open public data should be organised for local and regional employees, which would enhance understanding of the importance of open data in their own organisation;

54. notes that it is not enough for data to be opened up to decision-makers and citizens since specific skills are needed to use information. Data management and analysis skills should be taught in courses and continuing training provided at different levels;
55. draws particular attention to the fact that the proposal for a directive should not affect the core activities of libraries, archives and museums in the digital environment. The proposal should not result in a situation where a public body's ability to manage its core activity is undermined because the directive significantly reduces its options for developing financially viable activities using collections in cooperation with public and private sector operators. Especially with respect to contractual arrangements, such as in the case of large-scale digitalisation projects, exclusive rights should be considered for a transitional period if proved necessary for the provision of a service in the public interest;
56. believes that special attention should be paid to the logistics needed to handle the large amount of data that will be used by the applications developed and used by public administrations;
57. notes that there are different levels of availability of public information, and data whose accessibility promotes social transparency (e.g. personal tax information) can, when accessible on demand, create a problem of privacy protection if published as a re-use of open public data;
58. believes it is critically important that security requirements at every level should be met in order to ensure optimum levels of privacy and protection of personal data and prevent unauthorised tracking of any kind of personal information and profiling, including shopping preferences, medical status, health records, etc. Privacy protection should also be looked at in terms of how data from different files can be automatically merged to create highly personal profiles of individuals;
59. notes that opening up data containing personal information, including for use in research and development (e.g. medical research) is conditional on removing data that allow personal identification and on defining measures to prevent data being combined in this way. Authorities managing basic data should be encouraged to anonymise their data. Anonymised data can be also be used in developing services, in both the public and private sectors, provided there is no risk of such data being combined in such a way as to sufficiently reconstruct protected personal data. Charges should be allowed to reflect the cost of anonymising data;
60. notes that meta-data is an important aspect of information re-use and that publishing meta-data in a standardised format would in particular enhance the cross-border exchange of information. The Commission should draw up a recommendation for a standardised meta-data model; among other things, this could be based on meta-data requirements in the INSPIRE directive;

61. points out that the proposal for a directive should not affect the core activities of local, regional and national authorities;
62. feels it is vital to ensure that key public interests are protected at all levels. Any use of data which would put these interests at risk must be prevented;

Conclusions

63. considers that, as they stand, the actions put forward in the proposal for a Directive do not appear to raise any issue of compliance with the principles of subsidiarity and proportionality. To avoid an eventual risk of breach of these principles, local and regional authorities should be systematically consulted in the framing, implementation and governance of measures designed to stimulate the re-use of public-sector information for promoting economic growth and job creation;
64. believes it is particularly important to apply the subsidiarity principle in coordinated action by the European Union, the Member States, and local and regional authorities, which leads to responsibility being shared between the different tiers of government concerned and is underpinned by all sources of democratic legitimacy and the representative nature of the different players involved, as stated in the CoR's White Paper on Multilevel Governance¹⁵;
65. notes that the purpose of the proposal to amend the directive is not to decide what documents in the Member States should be public. Legislation governing public access to information would continue to be an exclusive competence of the Member States. The proposed provisions would apply to the re-use of documents where these are generally accessible, including under national access rules. However, in this context, we would expect a definition of "generally accessible documents", a concept which should only include documents to which Member State legislation enshrines the right of access;
66. believes it is important that clear procedures should be available to members of the public and businesses with respect to complaints and appeals concerning irregularities in the re-use of information;
67. notes that improving and opening up access to public information for the purpose of re-use should be well planned, drawing on study data, existing experience and best practice;
68. notes that online government services have to date consisted too much in transferring paper-based bureaucracy online. The EU and Member States should be forerunners, spearheading efforts at European and national level in close collaboration with local and regional authorities to bring about greater change in governmental procedures and structures by using

¹⁵ CdR 89/2009.

ICT, including the use of open data, to improve the meaningfulness, quality and productivity of work and efficiency of public authorities and to reduce red tape for the general public and business;

69. believes that the Commission should promote open public data through technical guidelines and recommendations, by publishing a common data catalogue and by introducing a common open data licence;

II. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Article 1.6.1.2

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
2. In exceptional cases, in particular where public sector bodies generate a substantial part of their operating costs relating to the performance of their public service tasks from the exploitation of their intellectual property rights, public sector bodies may be allowed to charge for the re-use of documents over and above the marginal costs, according to objective, transparent and verifiable criteria, provided this is in the public interest and subject to the approval of the independent authority referred to in Article 4(4), and without prejudice to paragraphs 3 and 4 of this Article.	2. In exceptional cases, in particular where public sector bodies <u>are required to generate revenues to cover</u> a substantial part of their operating costs relating to the performance of their public service tasks from the exploitation of their intellectual property rights , public sector bodies may be allowed to charge for the re-use of documents over and above the marginal costs, according to objective, transparent and verifiable criteria, provided this is in the public interest and subject to the approval of the independent authority referred to in Article 4(4) , and without prejudice to paragraphs 3 and 4 of this Article.

Reason

The wording used in this section is unclear and could easily lead to misinterpretations in a matter that is central to the implementation of the directive. The amendment is intended to describe the nature of exceptional cases more precisely and prevent misunderstandings resulting from misinterpretation of the text.

Amendment 2

Article 1.4.2

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
The means of redress shall include the possibility of review by an independent authority that is vested with specific regulatory powers regarding the re-use of public sector information and whose	The means of redress shall include the possibility of review by an independent authority that is vested with specific regulatory powers regarding the re-use of public sector information and whose

decisions are binding upon the public sector body concerned.	decisions are binding upon the public sector body concerned.
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Reason

It is not clear what is meant by "an independent authority that is vested with specific regulatory powers regarding the re-use of public sector information". Since the value of a proposed independent authority in this field is not clear or is disproportionate to the costs for Member States concerned, this proposal should be rejected or at least not welcomed.

Brussels, 10 October 2012.

The President
of the Committee of the Regions

Ramón Luis Valcárcel Siso

The Secretary-General
of the Committee of the Regions

Gerhard Stahl

III. PROCEDURE

Title	Opinion on the <i>Review of the Directive on re-use of public sector information and Open data</i>
Reference(s)	COM(2011) 877 final, COM(2011) 882 final
Legal basis	Article 114 TFEU
Procedural basis	Optional consultation
Date Commission letter	12 December 2011
Date of President's decision	6 February 2012
Commission responsible	Commission for Education, Youth, Culture and Research
Rapporteur	Anne Karjalainen (FI/PES), Member of Kerava City Council
Analysis	14 March 2012
Discussed in commission	6 July 2012
Date adopted by commission	6 July 2012
Result of the vote in commission	Adopted by a majority
Date adopted in plenary	10 October 2012
Previous Committee opinions	<ul style="list-style-type: none"> – Opinion on the Proposal for a Council Regulation on the <i>Community legal framework for a European Research Infrastructure (ERI)</i>, COM(2008) 467 final - 2008/0148 (CNS) and the Communication <i>Towards joint programming in research: working together to tackle common challenges more effectively</i>, COM(2008) 468 final. Rapporteur: Mr Aguirre Arizmendi, CdR 283/2008 fin¹⁶ – Opinion on <i>Interoperability solutions for European public administrations (ISA)</i>, COM(2008) 583 final. Rapporteur: Ms Ionita, CdR 10/2009 fin¹⁷ – Own-initiative opinion on <i>The Committee of the Regions' White Paper on Multilevel Governance</i>. Rapporteurs: Mr Van den Brande, Mr Delebarre, CdR 89/2009 fin¹⁸ – Opinion on <i>ICT infrastructures for e-science; A strategy for ICT R&D, innovation and research on FET in Europe</i>, COM(2009) 108 final, COM(2009) 116 final, COM(2009) 184 final. Rapporteur: Mr Žukauskas, CdR 156/2009 fin¹⁹

16 [OJ C 76, 31.3.2009, p. 6–13.](#)

17 [OJ C 200, 25.8.2009, p. 58–62.](#)

18 [OJ C 211, 4.9.2009, p. 1–27.](#)

19 [OJ C 141, 29.5.2010, p. 22–26.](#)

	<ul style="list-style-type: none">– Opinion on the <i>Internet of Things and Re-use of Public Sector Information</i>, COM(2009) 278 final, COM(2009) 212 final. Rapporteur: Mr Enache, CdR 247/2009 fin²⁰– Opinion on the <i>Digital Agenda for Europe</i>, COM(2010) 245 final. Rapporteur: Mr Markkula, CdR 104/2010 fin²¹– Opinion on the <i>European eGovernment Action Plan 2011-2015</i>, COM(2010) 743 final. Rapporteur: Mr Oravec, CdR 65/2011 fin²²
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²⁰ [OJ C 175, 1.7.2010, p. 35–39.](#)

²¹ [OJ C 15, 18.1.2011, p. 34–40.](#)

²² [OJ C 9, 11.1.2012, p. 65–70.](#)