

COM-3/026

Brussels, 2 December 1999

OPINION

of the Committee of the Regions

of 17 November 1999

on

**Public sector information: a key resource for Europe - A Commission Green Paper
on public sector information in the information society**

(COM(1998) 585 final)

The Committee of the Regions,

- HAVING REGARD TO** Public sector information: a key resource for Europe - a Commission Green Paper on public sector information in the information society (COM(1998) 585 final);
- HAVING REGARD TO** the decision taken by the Commission on 25 January 1999, under the first paragraph of Article 198c of the Treaty establishing the European Community, to consult the Committee of the Regions on the matter;
- HAVING REGARD TO** the decision taken by its Bureau on 15 July 1998, to direct Commission 3 - Trans-European Networks, Transport, and Information Society - to draw up the relevant opinion;
- HAVING REGARD TO** the draft opinion (CdR 190/99 rev. 2) adopted by Commission 3 on 24 September 1999 (rapporteur: **Lord Hanningfield (UK, EPP)**);

adopted the following opinion at its 31st plenary session on 17 and 18 November (meeting of 17 November 1999):

1. Introduction

1. Local and regional authorities are amongst the largest collectors, holders and providers of information. Much of this information is provided by the public and a great deal is already available to the public through a variety of communication media. In recent years, the rapid growth and development of the Internet has meant that local and regional authorities have been able to provide even greater access to the

information they hold.

2. We welcome the Commission's initiative to seek views on public sector information as it is a valuable resource which could be better utilised both by the public and others. There are however, considerable differences between the Member States as regards the different cultural and administrative traditions in collecting and organising information, and there are further differences both between and within local and regional authorities. Bearing in mind these various differences the COR feels that one should approach the issue of public sector information cautiously, in order that any proposals which are made are going to be beneficial to the citizen.
3. The COR is confident that a great deal of public information provided by local and regional governments is used within that particular region or locality, and the Commission may want to reflect on what the most appropriate channels would be for providing that information and to whom that information should be addressed. Whilst the technology now exists to facilitate global access, this does not mean that public bodies, including local or regional authorities should provide information, if there is no clear demand for such information. The principles need to be balanced against the practicalities and the reality of demand.
4. Many of the issues raised in the Green Paper relate to the levels of transparency of public sector processes and accessibility of information held by public sector bodies, including local and regional governments. As a principle the COR supports the right of European citizens to have access to the information which they need for their daily lives. We recognise however that "freedom of information" legislation varies from Member State to Member State and we should be careful to respect the positions of the individual Member States.

2. General observations

1. Given the type of information which local and regional authorities collect, privacy for the individual and personal data protection is paramount and must continue to be so. A balanced scheme would be required under any moves to increase access to public sector information, particularly where local and regional authorities are involved.
2. Some public sector information has considerable commercial value and any expansion of information provision should allow local and regional authorities to be able to benefit from the commercial provision of this information. This type of information is unlikely to be of value or interest to the individual citizen but if local and regional authorities were able to sell it, this would help to reduce the burden of taxation on the individual.

3. Question One

Which definition of public sector information is the most appropriate?

1. There are enormous difficulties in defining "public sector information." This stems in part from the problems of identifying the public sector itself. The development of local and regional authorities working in partnership with the private sector, the ability and functions of quasi-non-governmental bodies and so on has meant the dividing line between the public and private sector has become blurred. Services are increasingly contracted out yet the role of a private contractor today would have been considered part of the public sector in the past.

2. For this reason the COR feels that the emphasis should be on looking at information which can be provided for public consumption - “**public information**”. There are a number of categories which can be defined:

- Information relating to laws and regulations within a locality or region, “**citizenship**” or “**democratic**” information. These are basic statutes which all citizens should have the right to know about.
- Information which relates to the consumption of services provided by local or regional authorities which have been provided as part of the public sector, for example when swimming pools are open for public use. This category could be defined as “**consumer**” information.
- A final classification would be “**commercial**” information. Local and regional authorities often hold information which has commercial value.

3. Information gathered under statute or by local or regional authorities in the course of their activities would be an alternative and further definition of identifying “public information.” And if one was creative one could identify yet further definitions however, the key issue is that it is information which is for public use. In the case of democratic information we are dealing not with freedom of information issues but with “vital” public information which citizens should know - such as what laws govern their country, region or locality.

4. It should be noted though that regional and local authorities also hold information which may have been gathered by a third party, possibly a commercial entity. The status of this information may be different from information gathered directly by the local or regional authority and as such may be subject to certain constraints such as licensing restrictions.

5. Once one has identified what constitutes public information the next issue is to examine the balance regarding the type of information which local and regional authorities are actually able to provide. In considering the release of any information into the public domain a balance needs to be struck between:

- the public’s right of access to information (as per “democratic” information);
- the citizen’s right to privacy; and
- the need for confidentiality where disclosure would be against the public interest.
- the cost of making information available should be commensurate with the need for the information

6. The balance between these criteria varies between Member States and so there will be some difficulties in attempting to address this issue on a pan-European level. What is needed is to identify what information it is that the public need to lead their daily lives.

7. We think that it is important that the Commission be clear on the types of information which the public actually requires and would recommend that if work has not been undertaken in this field it should be done as soon as possible. The COR would be happy to work with the Commission to take this project forward. There is little use in developing legislation which will lead to more widespread access to public information but at significant cost and when there is limited public demand.

4. Question Two

Do different conditions for access to public sector information in the Member States create barriers at European level?

1. There are a wide variety of different legal structures in each of the Member States. These will impact on the levels of access which might be possible on a pan-European level but the issue should not be particularly significant within a Member State. The experience of local and regional government is that most information which these authorities provide is used within that particular region or locality and therefore the large majority of these "local" users of information would be bound by the same legislation.
2. There are variations in the practice and supply of information between and within local and regional authorities. On this issue though, the COR could work with the Commission to develop a best practice approach to encourage high levels of public information dissemination by local and regional authorities.
3. In terms of the private sector purchasing information, where local or regional authorities are engaged in the sale of such public information, it is our experience that commercial entities are generally prepared to pay market rates, whatever those might be within that particular Member State, region or locality.
4. It should be noted that, a number of specific sources of local government information are subject to their own access laws. The nature and type of access law varies between Member States and between types of local and regional authority. Therefore in attempting to move towards common access regimes considerable efforts should be made to look at the different access regimes in the different Member States.
5. Further, on the establishing of commonality of access it should be noted that local and regional authorities across the Member States collect and present data in a variety of different formats. Any moves towards standardising access conditions for information might lead to considerable costs being incurred by local and regional authorities.
6. As regards finding solutions it may well be the case that given the diversity of systems operating across Member States, the common factor will need to be equality of access for all within a Member State because imposition of standard pan-European structures could prove costly.

5. Question Three

Could the establishment of European meta-data (information on the information that is available) help the European citizens and businesses in finding their way in the public sector information throughout Europe?

1. Increased availability of meta-data would assist the public with finding information. Often information does exist but the public do not know where to acquire that information. The COR would hope that it would be possible to work with the Commission to develop a scheme in which some common standards could be developed for regional and local authorities, to facilitate searches for specific information.
2. The COR notes the growing sophistication of technology and internet search engines is improving the ability of citizens to locate information.

3. Moves towards directories of information would be useful but there would be difficulties in creating standard directories, as regards local and regional government because different types of sub-national government have different responsibilities and hence keep different types of information. There is no standard unit of sub-national government in the European Union. Flexibility and best practice will be the key to unlocking public information held by local and regional governments.

6. Question Four

What bearing do different pricing policies have on the access to and exploitation of public information?

1. The COR would support the principle that certain types of public information should be freely available - for example "citizenship/democratic" information. In providing any information through a local or regional authority will incur certain operating costs and depending on the method of information provision there may need to be certain nominal charges to the end user to cover the costs of providing this information.
2. The cost of information provision can be considerable and levels of development in information technology vary considerably between Member States and between local and regional authorities.
3. The COR would welcome moves by the Commission which would not inhibit local and regional authorities being able to provide information to private commercial interests. The funds raised from this sale of information can be used to reduce the taxation pressure on citizens.
4. There would need to be flexibility within any future legislation because the value of different types of information will vary between and within Member States.
5. Any information which a local or regional authority does provide however, must have regard to data protection legislation and the need to protect the privacy of individuals. Given this requirement there are further costs which might be associated with the provision of information and which may need to be taken into account when providing information.
6. As regards pricing concepts generally, there are unlikely to be differences in opportunity for either individual citizens or businesses, as long as pricing schemes apply equally within a Member State we would not see this as a problem.
7. There are however, differences between the EU member states regarding the ability of regional and local authorities to undertake this kind of information trading. As a consequence one would expect differences of opportunity for citizens and business between Member States but common approaches within Member States.
8. The key point though is, as long as national, regional or local legislation for citizens and businesses is applied equally there should not be problems for the pricing of information. It is unrealistic to consider a common EU pricing regime at this point in time.

7. Question Five

To what extent and under what conditions, could activities of public sector bodies on the

information market create unfair competition at European level?

1. There are considerable differences between the various Member States about the opportunity which local or regional authorities have to trade. In the case of the UK any form of "sale" of information would most probably take place through an intermediary. There are of course concerns that given the nature and scope of regional and local authorities in collecting data that if they were working with the private sector one could see the development of private sector monopolies in a limited range of fields.
2. Where local and regional government is in a situation to exploit the information which it holds, it must avoid unfair competition since it is possible the local/regional authority will be in a monopoly position. An ability to provide certain, defined types of information at commercial rates would encourage innovation in local and regional authorities.
3. Local and Regional Government should look at the impact on the private sector, should a charging regime be introduced. The issue of charging will be a specific issue for the pilot scheme proposed in the recommendations of this opinion

8. Question Six

Do different copyright regimes within Europe represent barriers for exploitation of public sector information?

1. Copyright legislation varies between the member states and would need to be carefully considered in approaching an opening up of public information provision. However, a number of EU led initiatives have helped to harmonise standards. The issue of copyright itself is not a direct barrier to the exploitation of information - licensing and other similar forms of legislation allow information to be available on a widespread basis.

9. Question Seven

Do privacy considerations deserve specific attention in relation to the exploitation of public sector information?

1. Data protection laws in the EU Member States are well developed and in general apply to information held within the public sector, including local and regional authorities. The COR would support data protection initiatives and the protection of information concerning the individual, particularly given the sensitivity of some of the information which local and regional authorities are obliged to collect. In 1998 in the UK, eight basic principles were drawn up setting standards for the disclosure of personal data. Similar principles should also be developed across Europe to give citizens confidence about how information is being used.
2. When privacy considerations need to be waived when a public body needs to act in the public interest this must be done with great care and following strict procedures for the release of personal information.

10. Question Eight

To what extent may the different Member States' liability regimes represent an obstacle to access or exploitation of public sector information?

1. There are variations in liability regimes but the COR does not view these differences as a major obstacle in the provision of access to public information for those wishing to access it. Standards of quality of information are important, but given that legislation governing liability exists already within the Member States this should not create any significant difficulties within a Member State.
2. There may however be some difficulties concerning cross-border liability and the fact that liability regimes vary between Member States and this may constitute a barrier to access of public information, as liability rules may not apply in an offending bodies home country. This may encourage firms accessing information to locate where liability laws are more lax. It would therefore seem logical that some greater co-ordination of Member States legislation is needed with regard to penalties for the misuse of public sector information by third parties.

11. Question Nine

To what extent are the policies pursued by the EU institutions in the field of access and dissemination of information adequate?

1. The EU institutions policies are generally useful and clearly moving in the right direction as regards information provision and dissemination. There is however a lack of linkage between the EU, Member States and in particular local and regional authorities. Development of a more integrated information system would be welcome and is an ambition which, thanks to technology is something which is increasingly straightforward to achieve. It might also be possible that regional and local authorities could play a greater role in providing information to the public about the European Union, as they are the tier of government closest to the individual citizen and “best practice” should be encouraged in disseminating information.

11.2 Navigation and search facilities can always be improved. Many of the internal search engines are based on free text searches rather than being indexed and this can often lead to variable quality in terms of search results which yield various quality levels.

12. Conclusions

1. There are many principles in terms of access and provision of public information which the COR would support. There are also however practical issues regarding delivery of information and costs which are a major consideration which would need to be addressed in making proposals about expanding access to public sector information. The principle of increasing public access should not lead to the imposition of excessive administrative or economic burdens on local or regional authorities.
2. The COR is also concerned that within this field, moves to introduce binding legislation might be impractical and cause some local and regional authorities difficulty. This would also mitigate against the principle of subsidiarity and local and regional authorities should be empowered to deliver information to the public in their region or locality that those people wish to receive.
3. In looking at the access to public sector information we must begin by looking at what information the consumer/citizen requires. There is little point in establishing a cumbersome and bureaucratic system if there is limited demand for accessing the information.

4. It would be possible to develop legislation at a European level on the issues discussed in the Green Paper but there are other ways of achieving greater access to public sector information, which would yield higher levels of access than legislation which might only be pitched, necessarily at a “lowest common denominator” level. In particular the COR would support moves towards a wide ranging scheme of developing “best practice” in the provision of public sector. The COR would welcome the opportunity to work with the Commission to look at ways in which this could be made a reality.
5. Access to information is improving all the time, with increased levels of private access to the Internet but there are still difficulties concerning those who do not have this kind of access and how public information might be made available to those people without computer facilities.
6. The speed of change within the information and communications industry will mean that the Commission will have to revisit the issue of public information regularly to ensure that it is keeping abreast of legislative and technological advances. The COR looks forward to playing a full and positive role in these future discussions.

13. **Recommendations**

1. The COR feels that the Commission should consult further and directly via the COR with local and regional authorities to discuss the role of sub-national government in the provision of public sector information. We would propose that a number of “pilot” local and regional authorities be selected from across the Member States to form a task-force to examine and report to the Commission on firstly, how principles of access could be translated into reality, and secondly whether it would be possible to achieve greater commonality in information provision.
2. The COR feels that given the major role which local and regional governments play with regard to public sector information, any proposals which the Commission does intend to bring forward to promote public access to public information, should involve the COR as early as possible in that legislative programme.
3. The dissemination of best practice in delivering public information is vital. The COR would welcome any further initiatives by the Commission which would enable local and regional authorities to ensure that citizens are better informed.
4. The COR would support moves towards a more coherent information structure within Member States so that there is great communication dialogue between local, regional and national tiers of government. The COR would wish to see the encouragement of schemes in which local web-masters are able to input information, to ensure that information provided by the public sector, at whichever tier of government would be both current and relevant.
5. The Committee of the Regions hopes that after the pilot authorities have reported, that the Commission will draw up some general guidelines on the provision of public sector information.
6. The Commission should also make efforts to support more effective information transfer between different administrative levels including regional and local authorities.
7. There is a growing need, given the increasing delivery of information through electronic media, to ensure that the public are trained and educated to be able to access the information they require to live their daily lives. The COR would propose that the

Commission continue to stress to the governments of the Member States, the importance of the education of the public on the use of technology which allows access to information and which ultimately empowers the citizen.

Brussels, 17 November 1999.

The President

of the

Committee of the Regions

Acting Secretary General

of the

Committee of the Regions

Manfred Dammeyer

Vincenzo Falcone

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