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Accompanying document to the

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

on the re-use of Public Sector Information

– Review of Directive 2003/98/EC –

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1. INTRODUCTION

This staff working paper accompanies the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Re-use of Public Sector Information – Review of Directive 2003/98/EC–.

Its aim is to present facts, evidence and examples relating to the re-use of PSI that are relevant to the issues dealt with in the Communication.

The Communication and this staff working paper have greatly benefited from consultation and interaction with the relevant stakeholders. A public online consultation on the review of the Directive was held from May to September 2008. In addition, a similar consultation on the review of the Directive was held for EU Member States. Section 5 presents the results of these consultations. A large number of workshops on PSI were held in EU Member States in 2007 and 2008, which included stakeholder participation (in particular private geographical information and meteorological firms, commercial publishers and industry associations). In parallel, a considerable number of bilateral contacts were taken up with publishers, private firms, government agencies and commercial associations.

2. PUBLIC SECTOR INFORMATION

Public authorities produce, collect and hold vast amounts of public sector information. **PSI** is considered to be **the single largest source of information in Europe**, covering widely diverging sectors and expanding across all areas of government. For example, financial, business information and statistics are regularly collected by public sector organisations. Company registers are maintained by the public sector. Legal information and administrative information are by their specific nature prime examples of public sector information. Geographical information is relevant to transport, tourism and many other uses and is widely produced by public sector agencies.

The tools of the information society make it possible for a substantial amount of the information produced by the public sector to be potentially re-used in the market place. **PSI** is behind **the development of new added-value services, products and applications** created by private companies by combining data from different sources.

2.1. Economic aspects

Recent studies indicate that the economic value of PSI is substantial, although measuring its value accurately is not a straightforward task. The MEPSIR study (2006) contracted by the Commission, for example, puts the **overall market size for the re-use of PSI in the European Union at €7 billion**.¹ Other recent figures available from the UK Office of Fair Trading (OFT) – The commercial use of public information (CUPI) Report² – indicate that the contribution of **PSI to the UK economy alone reached €30 million in 2006**.

¹ http://ec.europa.eu/information_society/policy/psi/docs/pdfs/mepsir/final_report.pdf.

² <http://www.opsi.gov.uk/advice/poi/oft-cupi.pdf>.

The 2008 Capgemini “Information Management Report”,³ of which **PSI** can be considered to be an important subset, noted that the **failure to exploit information assets**, i.e. the values and behaviours associated with how they collect, use, manage and share information, was **costing the UK private and public sectors £46 billion and £21 billion** respectively.

Figures on the main economic markets re-using PSI also make for very illuminating reading. The number and volume of new services associated with **Geographical Information (GI)** is skyrocketing. The demand for maps, navigation services and location-based services is increasing by the day. The **European Cartographic market**, a sub-set of the GI market, was already **valued**, according to industry sources, **at €1.5 billion** in 2005.⁴ The study on “Prospects for Business Models of German Companies in the European and Global Geo-information Market” calculated that the value of the **geo-information market in Germany in 2007 was €1.5 billion**⁵ and that it has grown by approximately 50% since 2000.

The digital maps/satellite navigation industries have experienced substantial changes in recent years, and access to and re-use of cartographic and cadastral information has been vital to the development of their business. It is estimated that 35 million portable navigation devices (PNDs) were sold in 2007, twice as many as in 2006, making personal navigation one of the fastest-growing areas in consumer electronics.⁶ The interest in and value of this industry was highlighted when **Nokia**, the world’s largest mobile phone maker acquired **Navteq**, the world’s biggest maker of digital maps, for **€5.7 billion in 2007**. Similarly, TomTom, a leading PND manufacturer from the Netherlands, recently bought Tele Atlas, the next biggest mapmaker, for €1.8 billion.

Nokia is manufacturing phones that can pick up signals from global positioning system (GPS) satellites, and is already including supplementary – location-based – services, which are expected to make up the main share of future revenues. Drivers, for example, can subscribe to real-time traffic information that allow them to anticipate traffic jams or check fuel prices at the petrol stations that appear on their maps. Nokia and TomTom have made moves to own the maps they use so as to be in control of the revenues generated by location-based services.

Infoterra Group

Infoterra Group is a wholly-owned subsidiary of EADS Astrium, with subsidiaries in France, Germany, Hungary, Spain and the United Kingdom. It delivers up-to-date, accurate and timely geo-information data and specialised GIS tools, which are key elements for improved predictions and better risk-based decisions for flood risk management, assets mapping and reconstruction planning. Many of their products are based on the re-use of public data from various countries aggregated with private data sources and then refined.

In addition to big companies, several SMEs have emerged in this sector, displaying a high degree of dynamism and growth and creating and developing niche markets. Intelligent Addressing is a good example.

³ <http://www.harnessinginformation.com/newsevents.php>.

⁴ EuroGeographics 2006 Report. Unpublished.

⁵ http://www.micus.de/pdf/Press_Release-GIW-study.pdf.

⁶ The Economist. “Satellite navigation” Oct 4th 2007.

Intelligent Addressing

Intelligent Addressing Ltd has become an information management specialist and data provider, focusing on land and property data, specifically addressing spatial referencing in the UK, whereby accessing and re-using addresses is a key data search attribute. The company was set up in 1999, and has grown substantially in recent years, developing highly specific added value products such as cleansing, matching and de-duplicating large address datasets for clients in a wide range of sectors, including real estate agencies, financial services providers, insurance and central government.

These growth trends in the GI sector were confirmed in the Assessment of the re-use of PSI undertaken on behalf of the Commission, where 46% of GI public sector holders reported that their total income had increased since 2002, and similarly 66% of GI re-users (private firms) reported that their income had grown in recent years.

The online European market for **legal information** (which includes legal, tax and regulatory information) was **valued at €730 million**,⁷ including a 14% increase in 2005. The Groupement Français de l'Industrie de l'Information (GFII) reported that the **French legal information** market was worth **€246 million**,⁸ an increase of 17% compared to 2007. The projected growth of this market for the coming 5 years is set at 7% per annum.⁹

El Derecho Editores

The Spanish Council of the Judiciary (CENDOJ), which has the task to care for the publication of case law, implements an open and transparent re-use policy, which has resulted in the number of re-users (legal information publishers) substantially increasing to more than 25 today. The number of Supreme Court case judgments delivered for re-use almost doubled from 2002 to 2006, to 1.25 million in 2006. El Derecho Editores, a relatively small publisher in 2001, has been particularly innovative since then, producing new highly pioneering legal information products appealing to law firms, judges and prosecutors and has become a major player in the Spanish legal information market, with sales of €20 million in 2007.

In the area of **business information**, in which much raw data is gathered from public sources, such as company registries, the press and the courts, the number of new products and services being created and delivered on-line is substantial and increasing. For example, the business information market comprises business intelligence services, business statistics, debt collection services, and business and credit rating information, which are so important for conducting business. **Febis**, the European Federation of Business Information Services, estimated in 2007 that the **business information market in Europe was worth €1.5 million**.¹⁰

Key players in this market are big companies such as Creditreform from Germany and Bisnode AB from Sweden, but small firms are also emerging.

⁷ The European Online Information Market 2006, Report. IRN Research. May 2006.

⁸ GFII. L'information électronique professionnelle en France: Le marché en 2007 et les tendances.

⁹ Wolters Kluwer Ltd estimate. The Future of the Information Industry Conference. August 2006.

¹⁰ <http://www.febis.org/cadre.asp>.

Bisnode AB

Bisnode AB is one of Europe's leading providers of digital business information, including credit reports, company and consumer information, direct marketing tools and market information for the general business-to-business market. Bisnode has companies in 19 countries and 3 200 employees (2007). Turnover last year was 4.055 million SKR (580 million SKR in profit). A large part of the information that Bisnode uses to produce information services originates from the public sector.

Access to and re-use of **meteorological information** has a direct impact on the economic activity of private firms, as many industries, particularly agriculture, transport, tourism and energy, are affected by weather-related events.¹¹ Variations in temperature – even small ones – can have long-lasting effects on the operational results of certain industries. The overall size of the market in **Europe for weather and climatological services** (including aviation) in 2006 was estimated to be around **€530m**.¹²

Businesses and individuals greatly value accurate weather forecasts as a means of mitigating the effects of bad weather. This requires ad hoc services beyond those provided by National Met Offices. Many big companies and projects, such as the media, airlines, large construction companies, energy supply programmes, large transport networks and so forth, require timely, immediate and very detailed meteorological information, which is crucial for their businesses. This is provided through the combination of synoptic observations, satellite images or radar data gathered from different sources applying embedded information technology and forecasting analysis provided by private weather firms to produce tailor specific added value solutions.

Foreca

Foreca is a privately-owned, full-scale weather service company based in Finland, which was established in 1996. It is seen as something of a pioneer in weather services for the digital media. It is at the forefront in providing wireless weather services. It recently launched a new free mobile internet weather service, providing weather information for more than 80 000 locations around the world. The service includes current conditions as well as weather forecasts up to seven days. It also contains animated maps, e.g. satellite data covering the whole world and rain radar images for selected territories

In addition, access to and re-use of reliable meteorological information is of paramount importance to the **weather risk/insurance management industry**, where users such as energy companies or retailers can limit any potential losses due to unforeseen temperature fluctuations. The notional value of contracts in this market is put at around **\$32 billion** in the US,¹³ whereas the market in Europe is only in its infancy.¹⁴

In the US, NBC Universal unit, part of General Electric, agreed to buy The Weather Channel in a deal believed to be worth around \$3.5 billion. This type of deal highlights the extent to

¹¹ According to the U.S. Department of Energy, an estimated 25% of a country's GNP.

¹² Towards a stronger European market in applied meteorology. Dr R. E. W. Pettifer. Meteorological Applications. Volume 15, Issue 2, pp. 305-312.

¹³ The Economist. "Something for a rainy day", 12 July 2008.

¹⁴ "Avec la creation de Metnext la meteo s'invite dans l'economie". Le Monde, 12 May 2007.

which citizens and businesses appreciate a high quality forecast, amid the plethora of internet websites giving current and future weather conditions.

The above figures illustrate that the impact and value of PSI is real and substantial, and confirm the growth potential of these markets. These growth trends were confirmed in the Assessment of the re-use of PSI undertaken on behalf of the Commission, which focused on three main PSI sectors: geographical and meteorological information, which will be further developed in Section 4.

2.2. PSI and Web 2.0

People are making full use of social network tools, such as user-created content, wikis, mashups and blogs, to combine content from different sources (including PSI) to produce Web 2.0 applications. Netmums.com has 350 000¹⁵ users and provides information on parenting; other examples include Theyworkforyou.com, Chicagocrime.org and Planningalerts.com. These applications have proven social benefits and public value. Another example is the farm subsidy site¹⁶ which tracks how the EU Common Agricultural Policy (CAP) is spent.

The rapid growth of these emerging types of activities are beginning to represent opportunities for economic growth, whereby **“the wide availability of public data for re-use seems to be an important enabling factor for web 2.0 application to flourish¹⁷”**.

Upmystreet.com

UpMyStreet has become one of most popular home and local information internet service providers in the UK. It provides users with a large range of searchable local information based on postcodes, including property prices, school information, local directory services, demographic profiles, council information, crime reports and transport links in a given area. Much of this information is PSI from many different sources. It derives revenue from advertising, partnerships and from providing business-to-business information services. 1.3 million people visit the site every month.

The importance and potential of **PSI and Web 2.0** was highlighted in **“The Power of Information Review”¹⁸**, which took a practical look at the use and development of citizen and government-generated information in the UK, and concluded that this growing area represents a **story of opportunities** for the development of new products and services. In a recent follow-up to this review, the UK cabinet Office launched a **“showusabetterway”** competition¹⁹ in June 2008, calling for entries on news ways and ideas as how to re-use PSI in the UK, and providing the winner with prize money (£20 000) to develop and launch his/her project to maximum effect. More than 450 participants took part in the competition, with very fascinating and imaginative projects being suggested. One of the winners aims to develop a website application that would allow users to introduce their postcode and find out what they can recycle and where. Another interesting idea submitted was to develop a UK Wreck Map, showing the location of undersea wrecks around Britain’s coast, which is of

¹⁵ <http://www.communities.gov.uk/documents/communities/doc/1061606.doc>.

¹⁶ <http://farmsubsidy.org/>.

¹⁷ <http://ipts.jrc.ec.europa.eu/publications/pub.cfm?id=1565>.

¹⁸ http://www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/power_information.pdf.

¹⁹ <http://www.showusabetterway.co.uk/>.

great interest to divers. The District of Columbia in the US²⁰ recently held a similar competition. These competitions have enabled governments to gain a better understanding of the potential of PSI, to identify which information assets held by them are valuable to re-users, and how they can be mashed up and re-used for the development of newly created services and products for new applications.

2.3. PSI as a driver of innovation and sustainable growth

Many examples exist of flourishing new small innovative firms, products and services, in new emerging sectors, which have significant PSI content.

In the area of utilities, for example, **uSwitch**²¹ is a UK internet company which was founded in 2000, and provides a free, impartial online and phone-based comparison and switching service that helps customers compare prices and services offered by the different utilities providers. It combines private information with PSI to provide its services. It developed a series of calculators that evaluate a number of key factors, including price, location, service and method of payment, and advises customers on the best deal to suit their needs. It was bought in March 2006 by EW Scripps for £210 million.

Similarly, in the area of meteorological information, **Meteosim**,²² which started as a university spin-off company in Barcelona, has specialised in offering products and consultancy services to the wind energy industry, such as wind power forecasting, and has substantially grown in parallel with the development of the wind energy industry.

In the area of geographical information, users can now consult and use cartographic maps from their computers. Services such as **Viamichelin** and **Mappy** have become popular sites for anybody planning a trip or holiday. Another good example of new services provided with a significant PSI geographical content is Google Maps/Google Earth or **Geoportail** in France, a service of the IGN (Institut Geographique National).

Google Maps

Google is a free web mapping service application and technology provided by Google. It offers street maps, route planning services and high-resolution satellite images of urban areas in numerous countries around the world. Some of its imagery comes from governmental sources. Google's programming model has led to the creation of numerous value-added services in the form of mashups that link Google Maps with other internet-accessible data sources. WikiCrimes is a wiki-style website where internet users can report crimes by placing pins on GoogleMaps.

The examples highlighted above have grown considerably and become established **players in their respective markets**. PSI in these examples is a valuable raw material that has been re-used by parties in added-value information products and services. **PSI has widely shown itself**, in this digital age, **to be a driver of innovation and growth**, and could greatly

²⁰ <http://www.appsfordemocracy.org/>.

²¹ http://www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/power_information.pdf.

²² <http://www.meteosimtruewind.com/>.

contribute to achieving the “**Growth and Jobs Strategy**”²³, a revised version of the **Lisbon Agenda**.

The above MEPSIR and OFT CUPI report²⁴ claims there is still widely **unmet potential of PSI markets**. These and other reports conclude that, with further availability of information and competition in the re-use market, PSI’s contribution to the economy could be much greater. The CUPI report concluded, for example, that, if there were more competition in public sector information re-use, PSI’s contribution to the UK economy could **easily double** in terms of value to **€1.5 billion per year**.

3. THE PUBLIC SECTOR INFORMATION (PSI) DIRECTIVE

The PSI Directive²⁵ provides for **minimum rules applicable in all the Member States** on the re-use of the information of public sector bodies and **on their behaviour** in the information market. However, **Member States are encouraged** to go beyond this minimum level, and adopt **measures** which are more **favourable for re-use**.

The Directive was adopted in order to address the many problems faced by private companies when dealing with public sector information holders: high charges, long response times, unfair competition, exclusive arrangements and the general non-availability of information for re-use. These barriers and the different ways of handling the issue in the Member States made it difficult for companies to develop added-value services and products based on public sector information, in particular cross-border products.

By enhancing the right to re-use, laying down transparency requirements, setting an upper limit on charges and establishing fair competition rules, the Directive aims to foster the creation of EU-wide information products and services based on public sector information. The Directive encourages Member States to make as much information available for re-use as possible. Ultimately, it targets a change of culture in the public sector, creating a favourable environment for the re-use of its information assets.

3.1. Key provisions

The Directive covers all type of documents. It addresses material held by public sector bodies in the Member States, at national, regional and local level, as well as organisations for the most part financed by or under the control of the public authorities, such as national meteorological institutes and mapping agencies. A broad definition of document ensures that the most economically valuable data assets are covered by the Directive. However, the Directive does not apply to educational, scientific, broadcasting and cultural institutions.

The Directive is built around two key pillars of the internal market: transparency and fair competition. It contains rules on the following aspects:

²³ http://ec.europa.eu/growthandjobs/pdf/COM2005_024_en.pdf.

²⁴ http://www.offt.gov.uk/advice_and_resources/publications/reports/consumer-protection/oft861.

²⁵ http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf.

3.1.1. Clear procedures to deal with requests for re-use

The lack of standardised conditions for re-use is a major barrier to opening up the full potential of the European market of PSI-based products and services. The Directive deals with this problem by providing for a minimum set of procedural rules on requests for re-use. Article 4 of the PSI Directive lays down an obligation on public sector bodies to process requests for re-use within a reasonable time that is consistent with the timeframes laid down for the processing of requests for access to documents or, in the absence of time limits or other rules regarding the timely provision of documents, not exceeding 20 working days. The same article also provides for specific procedural requirements in the event of a refusal to re-use (such as an obligation to communicate the grounds for refusal or reference to the means of redress). Documents should be made available for re-use in all formats and languages in which the information exists. Where possible, the material must be made available by electronic means.

3.1.2. Upper limit for charging

The upper limit is based on costs incurred to produce the information, together with a reasonable return on investment. **Lower charges (or no charges at all) can certainly be applied, and public sector bodies are encouraged to do so.** On request, public sector bodies have to say how the charges are calculated. Article 6 of the Directive provides that, where charges for re-use of public sector information are applicable, the total income from supplying and allowing re-use of documents shall not exceed the costs of collection, production, reproduction and dissemination, together with a reasonable return on investment.

3.1.3. Transparency of conditions applicable to re-use and means of redress

Article 7 of the Directive requires **any applicable conditions and standard charges** for the re-use of documents held by public sector bodies **to be pre-established and published**, through electronic means where possible and appropriate. It also has to be clear **where applicants can seek redress against decisions that affect them.**

3.1.4. Obligation to avoid discrimination between market players in the conditions for re-use

The PSI Directive tackles the problem of unfair terms of competition in an area where private companies compete between themselves, but very often also with public sector bodies providing the information. The Directive prohibits discriminatory treatment between comparable categories of re-use (Article 10(1)) and also cross-subsidies within public sector bodies where public sector documents are re-used for commercial activities which fall outside the scope of their public tasks (Article 10(2)).

3.1.5. Prohibition of exclusive arrangements, with the exception of the exclusive rights necessary for the provision of a service in the public interest

The Directive also seeks to make PSI available to all potential re-users. Article 11 of the Directive provides for a prohibition on exclusive arrangements. Such arrangements have to be terminated at the latest by the end of 2008. However, when an exclusive right is necessary for the provision of a service in the public interest, an exception from the above rule is allowed. The validity of the reason granting an exclusive arrangement must be regularly reviewed. Such exceptional exclusive arrangements must be also transparent and made public.

4. TRANSPOSITION OF THE DIRECTIVE

This was the first ever Community legal instrument aimed at harmonising the framework conditions for the re-use of public sector information at EU level. This and the fact that it is a ‘horizontal’ instrument, which cuts across the whole public sector administrations, and is shaped differently from country to country, triggered different approaches to the implementation of the Directive and somewhat disparate transposition.

4.1. Different approaches to implementation

Member States have taken basically three different approaches to implementing the Directive. Several Member States (11) have adopted specific implementing legislation regarding the re-use of PSI (for example Germany, Spain or Italy). 4 MS have used a combination of new measures specifically addressing re-use and legislation predating the Directive (e.g. Denmark) and 8 MS have adapted their legislative framework for access to documents to include re-use of PSI (e.g. France). The remaining Member States (4) have notified the Commission only of measures predating the Directive, with no specific re-use provisions (e.g. Poland and Hungary).

The Directive makes commercial re-use possible in Belgium

In Belgium the PSI Directive sparked a radical change from a complete ban on the dissemination or reuse of public sector information (so-called ‘documents administratifs’) for commercial purposes to a system based on the freedom to reuse such information for both commercial and non-commercial purposes.

A table setting out the different implementing measures in the Member States can be found in the Annex.

4.2. Delays in implementation, revised laws

While only four countries managed to notify their transposition measures before the deadline of 1 July 2005, the majority did so at a later stage and, in five cases, only after infringement proceedings were launched (the Commission initially launched infringement proceedings by sending letters of formal notice to 15 Member States in October 2005, it pursued the proceedings in March 2006 with reasoned opinions to 8 Member States, and the Court of Justice delivered four judgements in 2007 for non-transposition. The last notification of national transposition (by Belgium) took place only in May 2008, more than two and a half years after the deadline.

4.3. Complaints, infringement procedures

Following conformity checks of national transposition measures and/or complaints, the Commission approached the national authorities of a number of Member States on non-conformity issues in line with the “A Europe of results – Applying Community Law”²⁶ approach. Several Member States then changed their transposition laws to accommodate the concerns raised (e.g. Ireland and Greece). In three cases the Commission decided to initiate infringement proceedings for incorrect and incomplete transposition, the first, in 2006, triggered by a complaint (Sweden) and the second and third, in 2008 and 2009, on its own

²⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0502:FIN:EN:HTML>.

initiative against Poland²⁷ and Italy²⁸. The Commission considers that several key provisions of the Directive have not been properly transposed, in particular concerning charging, non-discrimination, prohibition of exclusive agreements and procedural requirements. Very recently, several additional complaints have been lodged to the Commission for incorrect application of the Directive; these are still due to be looked into by the Commission. So far very few non-conformity issues have been brought before the national courts.

5. RESULTS OF MEMBER STATE AND STAKEHOLDER PUBLIC CONSULTATION ON THE REVIEW OF THE DIRECTIVE

5.1. Results of the Member State consultation on the review of the Directive

The Directive itself establishes that the Commission will submit a report to the European Parliament and the Council in 2008 on the results of the review of the application of the Directive.

In this context, a questionnaire was submitted to the Member States via their representatives in the PSI Group,²⁹ to provide the Commission with their views on the review. The consultation was divided into 3 specific sections: i) implementation and impact of the Directive, ii) scope of the Directive, and iii) looking ahead. **14 Member States** have **responded** to the questionnaire. A summary report and the specific Member State responses are publicly available at http://ec.europa.eu/information_society/policy/psi/index_en.htm

By and large, the **consultation** yielded substantial **positive feedback on the impact of the PSI Directive** among Member States, which, from a qualitative point of view, regard the PSI Directive as positive as it provides a legal framework for the re-use of PSI in their respective countries – an area that was largely unregulated before. The Directive has set a new policy in the Member States and in the EU, provided a set of principles with which public bodies now have to comply as regards the re-use of PSI, and triggered much positive reaction.

From a **quantitative point** of view, some Member States take the view that it is **too early to tell** what the impact of the Directive has been, due to the **late transposition into national legislation** in certain cases. Others consider that it is very difficult to provide factual economic figures to measure the impact of re-use policies in their respective countries. Member States (e.g. **UK, Slovenia and France**) that have implemented a considerable number of practical measures to support the implementing legislation of the Directive have signalled that the Directive has had a **positive impact** on their information market.

However, Member States have also stated that the **full potential of PSI re-use is far from being attained** due to the **lack of awareness** by public sector bodies of the opportunities offered and of their responsibilities as regard PSI re-use, and due to the **limited knowledge by the private sector of the availability and potential** of PSI re-use. In addition, some Member States have indicated that the private sector finds it very difficult to establish what

²⁷ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1524&format=HTML&aged=0&language=EN&guiLanguage=en>.

²⁸ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/425&format=HTML&aged=0&language=EN&guiLanguage=en>.

²⁹ It consists of Member State officials, local or regional authorities, and representatives from private sector organisations who meet regularly to exchange good practises of PSI re-use and initiatives supporting PSI re-use and discuss practical issues regarding transposition of the PSI Directive.

type of PSI is available for re-use and to discuss PSI re-use with different levels of government.

Member States have also flagged the problems private companies face when public bodies compete commercially with them in the market, notably when the latter is undertaking its public task.

As regards the impact on **pricing**, most Member States believe that the Directive has facilitated and consolidated a general trend towards applying **low and even marginal cost pricing regimes** in their respective countries and **greater transparency** has been introduced within all levels of government when establishing prices. A few responses said that, while the Directive establishes minimum standards to harmonise the re-use of PSI in the EU, at the same time it encourages Member States to go beyond this minimum level of harmonisation. Some of them have thus decided to go further than the provisions of the Directive and have declared plans, for example, to apply marginal cost pricing to all central government PSI in future (e.g. the Netherlands), or have decided that all public sector information must be available for re-use (e.g. Slovenia).

As regards the **scope** of the Directive, the vast **majority of respondents much appreciate** the potential **for re-use of** the information held **by cultural, research and public broadcasting institutions**, although most of them are of the opinion that there are **no grounds to bring these sectors within the scope of the Directive**. Member States consider that the material these institutions hold includes substantial third **party IPRs and copyright** works, which would not be allowed for re-use in any case, and the **administrative burden** and associated costs these institutions would incur in order to comply with the Directive would not be outweighed by the potential benefits. There seems to be a common view that a **substantial cost/benefit study** on this topic should be undertaken before considering extending the scope of the Directive. It should also be noted that two Member States (Latvia and Lithuania) would like the scope to be extended to sectors currently excluded.

The overwhelming majority of the Member States that responded to the questionnaire believe that, at present, it is too premature to review the Directive, preferring to allow further time for full implementation and to reconsider a possible review at a later stage.

5.2. Results of stakeholder consultation on the review of the Directive

In addition to the Member States questionnaire, an **online stakeholder consultation** on the review of the PSI Directive was undertaken to gather information from as many sources as possible, including public sector content holders and commercial and non-commercial re-users (universities, NGOs) on their views of different aspects of 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 on the Information Society PSI Thematic Portal³⁰ and on the Commission's 'Your Voice in Europe' webpage.³¹ A summary report and the specific Member States' responses are publicly available at http://ec.europa.eu/information_society/policy/psi/index_en.htm

The Commission received **38 responses** to the stakeholder consultation. These embrace the different parties involved in the PSI value chain: content holders (government agencies),

³⁰ http://ec.europa.eu/information_society/policy/psi/index_en.htm.

³¹ http://ec.europa.eu/information_society/tl/activities/consultations/index_en.htm#open_consultations.

commercial associations, private firms, public–private and non-profit associations, private individuals, and two others that do not fall into any particular category (a political party and a PSI thematic network).

Overall, respondents reported 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 **re-users (the demand side)** on the current PSI reuse environment. While the **former group** considers it to be **satisfactory and working well**, **re-users** are more critical and feel that 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 significant **barriers remain** that need to be addressed in order to tap the full PSI re-use potential in the EU. **Problems** frequently cited are the **lack of awareness** of the potential of PSI re-use and of the Directive among public sector bodies, especially at regional and local level, **little effort** from public bodies **to facilitate and promote re-use**, 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, **high prices** for PSI, **unfair competition practices** by public sector bodies, very **limited transparency in public bodies' re-use policies** and particularly the way charges are calculated, and **the absence of efficient means of redress in most countries**.

As regards the impact of the Directive on **charging policies** practised by the public sector, the **overwhelming majority** of private re-users believe that 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 was felt that this would have an impact on developing the content market in Europe. However, **specific stakeholders** (basically associations) **representing** the views of the so-called “**excluded sectors**” **came out against any extension** of the scope, underlining 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 not in any case fall within the scope of the Directive, since it has third party copyrights. The mechanism proposed by the **High Level Group on Digital Libraries in its Public Private Partnership Report**³² 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 by the principles and spirit of the PSI Directive**.

The bulk of the responses from re-users **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 the Member States and/or dispute resolution mechanisms, and introducing greater clarity regarding the public tasks of public sector content holders. In addition, respondents suggested drawing up national asset

³² http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/reports/ppp/ppp_final.pdf.

lists/repositories and obliging Member States to report annually to the Commission on their measures to promote PSI.

Finally, it was strongly recommended that guidance be issued on specific terms of the Directive, which are, in their opinion, very ambiguous, such as the definitions of “public tasks” and “document” and the concepts of “marginal cost pricing” and “reasonable return on investment”.

6. EVALUATION OF THE SCOPE AND IMPACT OF THE DIRECTIVE

6.1. Impact of the Directive

6.1.1. Increase in re-use of PSI

Whilst the Directive came into effect in 2003, but was not fully transposed in all Member States until early 2008, **positive effects have been reported.**

To measure the impact of the re-use of PSI, an assessment³³ was carried out on behalf of the Commission. This focused on three main PSI sectors: geographical and meteorological information, which has the highest economic value, and legal and administrative information, an area which is singled out in the review clause.

The conclusion of the assessment is undoubtedly positive, as the re-use of PSI is increasing in all three sectors although the impact across these sectors has been uneven.

The assessment indicates that the Directive has had its **strongest impact** in the sector of **geographical information (GI)**. **The GI market is growing steadily across European markets.** The assessment reports that since 2002 **re-use requests have increased by 250%** on average **and the download volume** has grown simultaneously by **approximately 350%**. **Two thirds (66%)** of respondents of GI re-users (private firms) reported that their income has increased in recent years and new emerging players are entering the market offering pioneering applications for geographical information. **The National Mapping and Cadastral Agencies (NMCA) of Spain and Austria** have made **significant changes to their charging policies, and provide very good examples of pricing and licensing models** geared to facilitating re-use.

A substantial number of public holders of GI have introduced significant changes to their data policies as a result of the Directive, many of which refer to technical issues such as data formats and modes of delivery. As a consequence, GI is increasingly being offered on internet portals or via web services. While recognising and welcoming these improvements, GI re-users still **complain** about **restrictive licensing and high prices**, although a few also highlighted positive changes in terms of pricing and licensing (34% and 28% of positive replies respectively).

The report states that a large majority (79%) of private re-users of GI would like to have access to more public GI but high pricing and restrictive licensing are preventing them from doing so. In order to meet this demand, the assessment suggests that public sector holders should improve their delivery conditions rapidly. It should be noted that in recent

³³ http://ec.europa.eu/information_society/policy/psi/docs/pdfs/micus_report_december2008.pdf.

years **GI has been made increasingly available by alternative private sources**, consequently leading to a **substitution** of public sector information.

The assessment also reveals that the Directive has had a **considerable impact** in the sector of **legal and administrative information**. The majority of public sector holders say that they have made noticeable changes to their data policy since 2002, nearly half of them confirming that the changes have been brought about by legislation. The **majority of public sector holders (79%)** also report that they provide legislative and administrative information **free of charge on their websites**.

The market for legal and administrative information is growing: on average by 40% since 2002. Most of the private firms (legal publishers) surveyed reported ever-increasing rates of income. According to the assessment, it is in particular those who add value to PSI who have reported exceptional growth rates. In addition, several new online information portals have been set up which offer convenient search tools (e.g. thesaurus) to access and re-use legal information.

However, the survey also highlights the continuing dissatisfaction expressed by re-users about public authorities. In this sector **the lack of information** on what **legal and administrative information is accessible and available** for re-use was flagged as a major area of concern. Although this can be explained by the decentralised organisation of jurisdiction, it could also indicate that re-users do not have a successful business relationship with the respective public sector holder.

In the sector of **meteorological information**, the assessment suggests that the Directive has had limited impact so far. Although the National Meteorological Services (NMSs) have also introduced many changes to their data policy, only 5 out of 25 NMSs reported that these policy changes were due to changes in national legislation. The market for private **weather services is also growing**. Most of the respondents (74%) reported an increase in data **volume download of 70%** and, of those that reported figures for turnover, all confirmed significant increases in recent years. However, it can be assumed that the number of companies active in the meteorological sector in Europe is not more than 70, which is still a very small number for a market with such massive re-use potential.

Meteorological re-users complain basically about **pricing, transparency and licensing conditions**, and report that discriminatory practices are particularly prevalent in this sector. Many re-users expressed their wish for an efficient system providing free meteorological data and unrestrictive licences, as provided in the United States by NOAA,³⁴ from which they are increasingly gathering much of their data. The majority of re-users of meteorological information (88%) would like to obtain more PSI from holders. However, due to high pricing and licensing they currently refuse to purchase additional data and aim to either gather it elsewhere (US) or set up complementary (private) networks to gather the information they may require.

Meteoedia

Meteoedia is now one of the leading weather service providers in Europe, with approximately 120 employees. It operates offices in Germany, Switzerland, Austria, Canada and the United States. The company has developed a complementary private ground weather station monitoring network in Germany and Switzerland, with about 600 stations today.

³⁴ US National Weather Service. <http://www.noaa.gov/>.

The demand for more PSI in the market is still significant, as re-users of all three sectors have reported continued buying interest. In order to meet this demand and thus help to support the information economy in Europe, **the assessment believes that PSI holders should focus on crucial aspects such as licensing and pricing, and provide greater support for the re-use of PSI.**

6.1.2. *Effects of the principles applied to charging*

Given the importance of the current and potential economic value of the commercial re-use of PSI, there is an ongoing debate about what **access model and re-use arrangements would facilitate the greatest re-use of PSI, maximising its economic and social potential.** This topic raises many controversial issues regarding the manner in which public sector bodies should make their information publicly available, including whether it is appropriate to implement cost recovery policies and to use PSI as an income-generating source.

The literature regarding access to PSI typically makes reference to four broad access models, **profit maximising, cost recovery, marginal cost and zero cost.** The first models target profit-maximising strategies where prices are set above the costs of data production at market levels. Cost-recovery strategies aim to recoup some or all of the costs of data production. In the latter models PSI is priced at either no or marginal cost. In today's digital world information products and data are expensive to produce, but, once produced, they are very cheap to disseminate.

In 2008, Cambridge University³⁵ investigated, at the request of the British Government, the impact of adopting different models for the provision of PSI by UK trading funds, which are required to be as financially self-sufficient as possible by selling their data and services and eventually providing a return to the UK Treasury. The study examined the costs and benefits to society, and the effects on government revenue of the different charging policies mentioned previously. It concluded in its report that **charging no or marginal costs for PSI results in social and economic benefits that far outweigh the immediate financial benefits attained by cost-recovery strategies.** However, critics of this report have questioned the permanent sustainability of a scheme providing PSI at no or marginal prices when the cost of creating and maintaining quality PSI can be substantial. The UK Treasury has commissioned a follow-up report ("Shareholder Executive Assessment")³⁶ to analyse the argument as to whether the UK economy would benefit from modifying the current trading funds business model. If the current business model of the trading funds were to be changed to marginal cost, this would require substantial additional investment from public sources.

Ordnance Survey (UK)

Ordnance Survey maps every square metre of Great Britain. For most of its existence, the agency has been a government body, publicly funded and managed. Since the public sector reforms in the 1980s and 1990s, however, it has become a Trading Fund. It is therefore required to fund both its public task and commercial work from its own revenues (cost recovery basis). The quality of its products is considered remarkable by stakeholders. Further to the transposition of the Directive into UK law, a series of complaints have been made by some of its customers about its licensing policies, through the appropriate redress mechanism

³⁵ <http://www.berr.gov.uk/files/file45136.pdf>.

³⁶ <http://www.shareholderexecutive.gov.uk/publications/pdf/tradingfunds250608terms.pdf>.

in the UK. The OS has recently modified its licensing regime and is introducing a free of charge arrangement for the non-commercial re-use of its information.

It should be recalled that, as regards the pricing of PSI, **Article 6 of the Directive** stipulates that “where charges are made, the total income from supplying and allowing re-use of documents **shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment**. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved”. The Directive also states that “Member States should encourage public sector bodies to make documents available at charges that do not exceed the marginal costs for reproducing and disseminating the documents”.

There are some **recent remarkable examples of public sector bodies that have adapted their policies to** a close to marginal cost pricing approach. The transposition of the PSI Directive into Austrian law included amendments to the Austrian Act for Surveying concerning the delivery of data. In this context, the **Austrian National Mapping and Cadastral Agency (BEV)** was already able to change its **pricing and licensing model in 2006 for certain datasets**, which resulted in a **significant reduction of fees of up to 97%** and transparent re-use conditions. As a consequence of this drastic reduction in prices, **re-use requests and orders have exploded**, with increases of orders of up to 7 000% for digital orthophotos. The additional demand emerged from small and medium-sized companies, which can be classified as “**new user groups**” in the branches of geo-marketing, health services and agriculture. The **BEV reports that it is maintaining its total turnover**. This is a **win-win strategy** whereby **PSI re-use has been largely increased with no impact on the finances of the Cadastral Institution**. A similar case has occurred with the Spanish Cadastre.

The Directive has made for an explosion in demand

In the context of implementing the PSI Directive, the **Spanish Cadastre** modified its access and re-use policy, pricing on a marginal cost basis, which has led to an increase in demand for its geographical information. For example, more than 17 000 cadastral certificates have been issued and 900.000 maps served daily since the adoption of the new policy.

It should also be noted that the **US access model** aims to minimise government control and maximise public access to and re-use of PSI. In the **US, federal information** (‘Circular A-130’ – Management of Federal Information Resources) has no copyright and hence falls into the public domain. The private sector is encouraged and expected to use raw content to create new information services and buy public data at **no more than the cost of dissemination, and without any government re-use restrictions**. It is claimed that by disseminating PSI as widely as possible, the private sector adopts a greater role in enhancing the value of PSI by establishing services from raw public data and then re-selling it. While the actual contribution of PSI to the US economy is difficult to measure and quantify, it is believed to be considerable in terms of the number of new firms being established, additional jobs being created and tax revenue generated.³⁷

³⁷

http://ec.europa.eu/information_society/policy/psi/docs/pdfs/pira_study/commercial_final_report.pdf.

6.2. Scope of the Directive

The review clause enshrined in Article 13 of the Directive requires the Commission to address the scope of the Directive in its report to the European Parliament and the Council in 2008 on the application of the Directive. The Commission has to analyse whether cultural establishments, education and research organisations and public service broadcasters, currently excluded from the scope, ought to be covered by the Directive.

6.2.1. Cultural institutions

(1) Scope

The question of whether **cultural institutions** should be brought within the scope of the Directive is complex. In general, cultural institutions represent a **hybrid sector**, collecting material of which a high proportion involves third-party rights, but also holding amongst their collections a **considerable amount of public domain material**.

Cultural institutions have embarked on major digitisation tasks in an effort to achieve their mission and make full use of the opportunities the new digital environment offers. Funds for online digitisation and availability of cultural content are scarce and are being rationalised, and, with increasing public spending restrictions, public-private partnerships (PPP) have come into play. Private firms are cooperating with public institutions in their digitisation efforts in exchange, for example, for web space for advertising. Other cultural institutions have outsourced the digitisation and exploitation of their content to commercial image providers.

A study³⁸ launched by the Commission on whether or not **Europe's cultural institutions** should adopt the principles and provisions of the Directive and be brought within its formal scope found that the “**benefits of subjecting them to the regime of the Directive appear on balance to be modest** at current levels of activity, although it is probable that the value of cultural information will rise in the context of new technology-driven developments in and around digital libraries”.

The bulk of the discussion surrounding access to and re-use of this type of content focuses on the issue of copyright. The concept of who is the owner of copyright is not a simple one, and documents subject to third-party IPR are excluded from the Directive.

The report states that the licensing of cultural content would in any case require major **administrative activity** to **clear third-party** or **unknown rights**. There is also a concern among cultural institutions that the obligation to respond to re-use requests will lead to **heavy processing costs, including identifying and dealing with rights holders**. It could be questioned whether undertaking such activities goes beyond the remit of these institutions.

The report highlights that the recent launch of the **Europeana** service throws up enormous **potential** for exposing tens of millions of items of cultural content available for re-use, and says that one possible disadvantage of cultural institutions remaining outside the scope of the Directive is that valuable PSI held by archives may not become available for re-users on the terms that it specifies, and may hamper the potential re-use market.

³⁸ Assessment of the Economic and Social Impact of the Public Domain in the Information Society, Rightscom, 4/2009.

Overall, **the report concludes** that “whilst there is little doubt that PSI held by the **cultural sector** has a **significant potential value for re-users**, the **advantages** of including cultural heritage institutions within the scope of the Directive are **currently difficult to assess and require further investigation over time**. The possible implications to this sector, as previously described, should not be allowed in the longer term to outweigh the possible advantages to the economy, industry and society. This situation will clearly need to be monitored over the next few years in the quite possible event that large-scale digitisation combined with enhanced ICT for accessing content creates conditions where competition factors in relation to re-use of cultural content become more evident”.

The recommendation of the High Level Group on Digital Libraries Sub-group on PPP that cultural institutions should aim to abide by the principles of the Directive and should seek to avoid exclusive arrangements in establishing PPPs has been identified and signalled as a way forward to make cultural content more accessible and available for re-use.

(2) Charging at cultural institutions

Cultural institutions are widely committed to achieving their various social (cultural/educational) and economic goals through the principle of providing free access to direct end users (general public, scholars and researchers). However, they are inclined to regard commercial re-use as a separate matter, for which they consider that they should be compensated. In the above-mentioned study, **76% of respondents** in the report **offer free access** to their content for end users, while the **remaining 24%** make some kind of **charge** for accessing at least some of their content. It should be noted that **32% of respondents charge for licences to re-use** content, showing a tendency among some cultural bodies to distinguish between access and (commercial) re-use in their charging policies. The recent launch of **EUROPEANA**, the European Digital Library, has made this charging issue very visible for some of the collections it makes available.

According to the study, **image libraries** are probably the current most widespread **form of commercial activity** undertaken by cultural institutions. Although this area of activity is not considered as being financially important, the potential **loss of these revenues** and the **probable absence of budgetary compensation** remains a **fear** for many cultural institutions. Many of the **original objects** in question are in the **public domain** and **no longer covered by copyright, limiting third party access and re-use to this material**. This presents the **potential risk of public domain material becoming “privatised” in the digital world through restrictive access and re-use conditions**. This could be of particular **concern when cultural institutions hold unique pieces of art**.

A number of cultural institutions implement free access and re-use policies with their public domain collections. The French National Library allows public domain books to be downloaded from its website.

6.2.2. *Educational institutions*

The widespread and efficient access to and re-use of scientific information adds to the efficiency of research and leads to increased returns on R&D investment. **Scientific information is an important category of PSI** in that very frequently research is **publicly**

funded and is carried out by universities or public sector research centres. Scientific information is a highly specific type of PSI, very different in nature to statistics or meteorological information.

The **scientific world** has a **well established system for disseminating and exploiting research findings and results**. For example, the patent system was originally designed and established for the wide dissemination of inventions. The internet and new information society tools have changed the way in which researchers can access, share and re-use scientific information. “Open access” policies pursue the goal of making scientific articles and research data freely accessible to the reader on the web. It is widely felt by the research community that **publicly funded research** should be **widely available and useable to all, to maximise its potential**, a view which is reflected in the Commission Communication on “Scientific information in the digital age”³⁹.

6.2.3. *Public service broadcasting institutions*

Public service broadcasters hold amongst their collections a considerable amount of valuable material with significant commercial and non-commercial re-use potential.

Given that the **Directive does not apply to documents if a third party owns the intellectual property rights** (IPRs), this provision could considerably **narrow the number of documents that broadcasters could make available and accessible for re-use purposes under the principles of the Directive**. Allowing the commercial re-use of broadcast material would require the **transfer of rights** from a large number of persons or entities who may have contributed to creating such material for the public sector body in question if such material is to be made subject to the provisions of the PSI Directive. **This process can become complex and cumbersome.**

6.3. **Re-use of Commission information**

In April 2006, the Commission adopted a **Decision**⁴⁰ **on the re-use of Commission information**, applying internally the principles of the PSI Directive, and going beyond those principles in certain provisions, such as marginal cost pricing. The Commission is facilitating the re-use of important information resources, such as European legislation and case law (“EUR-Lex”⁴¹), public procurement information (“TED”⁴²), statistics – Statistical Office of the European Communities (“Eurostat”⁴³) – and the Directorate-General for Translation’s translation memories for the *Acquis Communautaire*.⁴⁴

6.3.1. *Identify, publish, promote – strategy*

The Decision on the re-use of Commission information lays down the conditions for the re-use of documents held by the Commission or on its behalf by the Office for Official Publications of the European Communities (Publications Office), the aim being to facilitate wider re-use of information and enhance the image of openness of the Commission. The

³⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0056:EN:NOT>.

⁴⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:107:0038:0041:EN:PDF>.

⁴¹ <http://eur-lex.europa.eu>.

⁴² <http://ted.europa.eu>.

⁴³ <http://epp.eurostat.ec.europa.eu>.

⁴⁴ <http://langtech.jrc.it/DGT-TM.html>.

Decision excludes software and documents covered by industrial property rights, research results of the Joint Research Centre (JRC) and documents made accessible to a party under specific rules governing privileged access to documents. In terms of charging policy, the Decision goes beyond the rules set out in the Directive and information is in principle free of charge. In specific cases, marginal costs incurred for the reproduction and dissemination of documents may however be recovered. The Commission aims to implement an **“Identify-Publish-Promote” strategy**, whereby all Commission departments producing or hosting valuable information assets (studies, reports, surveys, statistics, etc.) are recommended to make them visible and easily re-usable.

6.3.2. *Examples of re-use of Commission information*

6.3.2.1. Eurostat

Eurostat adopted a policy of **free dissemination back in October 2004**. Re-usable documents and data held by Eurostat include different types of statistical data, tables, databases, metadata, etc. All re-usable information is published on Eurostat’s website with a simple legal notice that re-use is free of restrictions for end users.

Each month, Eurostat’s website registers about **1 million visitor sessions**, 300 000 PDF downloads and about 350 000 data extractions. These figures amount to a **500% increase in the last 5 years**. Commercial redistribution is permitted and subject to the respect of the conditions stated in the copyright notice displayed on the Eurostat website.

6.3.2.2. EUR-Lex

The **EUR-Lex web portal provides** direct access to European Union law. The system makes it possible to consult the Official Journal of the European Union, the EU Treaties, legislation, case-law and legislative proposals. It also offers extensive search facilities.

The portal is managed by the Publications Office. Access to the site is completely free and not subject to any conditions. Reproduction for personal use or for further non-commercial dissemination to end-users is authorised on condition that some form of acknowledgement is made. Downloading for commercial re-dissemination purposes is subject to the respect of the conditions stated in the copyright notice displayed on the EUR-Lex website. Delivery of files (e.g. in xml format), namely for exploitation and commercial re-dissemination, is subject to the conclusion of a priced licence agreement, issued on behalf of the European Communities by the Publications Office

The **number of hits on the EUR-Lex portal** has steadily increased from about 678 700 in 2007 to **929 000 daily page views** in 2008, a **37% increase**.

The annual volume of data uploaded remains constant, **13265 new documentary units were uploaded in 2008** (i.e. in several languages), compared to 14 666 in 2007. The annual volume of data downloaded on the portal is on the increase as **330 million documents were downloaded in 2008**, compared to 310 million in 2007 (7 % increase). The number of paying licences is stable (22 in 2008 versus 23 in 2007).

6.3.2.3. Translation Memories

In November 2007, the European Commission’s Directorate-General for Translation (DGT), in joint cooperation with the Joint Research Centre (JRC), made its **multilingual Translation**

Memory for the *Acquis Communautaire* (the body of EU law) publicly accessible. This is a collection of **parallel texts (texts and their translation, also referred to as bi-texts) in 22 languages and 432 possible language combinations**. A translation memory is a collection of small text segments and their translation. Translation memories are used to support translators by ensuring that pieces of text that have already been translated do not need to be translated again. Both translation memories and parallel texts are an important linguistic resource that can be used for a variety of purposes, including, for example, training automatic systems for statistical machine translation, or producing monolingual or multilingual lexical and semantic resources such as dictionaries and ontologies. The full potential of these tools - as communication enablers for business and citizens alike - has not yet been reached, and its full market potential remains unknown. **The most outstanding advantage** of the *translation memories* – apart from being freely available – **is the number of rare language pairs** (e.g. Maltese-Estonian, Slovene-Finnish, etc.). In **2008**, almost **24 000 downloads** of the translation memories for the *Acquis Communautaire* were registered on the JRC server.

7. FOLLOW-UP TO IMPLEMENTATION

7.1. National PSI bodies/dispute settlement bodies

In some Member States the transposition laws have established clear responsibilities in certain government departments as regards the access to and re-use of PSI. This is notably the case of the Office of Public Sector Information (OPSI), which operates from within the National Archives in the UK. OPSI provides a wide range of services to the public, information industry, government and the wider public sector relating to finding, using, sharing and trading information.

OPSI

OPSI has UK-wide policy responsibility across government for the re-use of public sector information. OPSI is and has been at the heart of information policy, setting standards, delivering access, becoming a redress mechanism body and encouraging the re-use of public sector information.

In its two years of existence OPSI has:

- published a range of guidance material, which sets out step-by-step what public sector organisations need to do to meet their responsibilities;
- contacted over 400 public sector organisations to spread awareness and raise standards;
- introduced the Information Fair Trader Scheme (IFTS), IFTS Online, and Click-Use Licensing, which set standards and make it easier to re-use PSI;
- investigated a number of complaints against public sector information holders, leading to licensing improvements;
- introduced a PSI mediation scheme, complementary to the redress body they represent; and
- set up a website with PSI information, which has become one of the 10 most visited websites in the UK.

Slovenia and France have also established national bodies responsible for PSI re-use matters, including a redress mechanism. The establishment of these bodies has helped in those countries to identify which administrative body addresses issues surrounding access to and re-use of PSI. In **Slovenia, the information Commissioner** has issued several decisions regarding re-use matters and in **France the CADA (Commission d'accès aux documents**

administratifs) has seen its area of competence expand to include re-use issues, and has taken a whole series of decisions (53 in 2007) on the re-use of information, most of them in favour of re-users.

7.2. Licensing policy

The Directive requires public sector bodies to exercise their copyright in such a way that it facilitates and encourages re-use. The advent of the digital age has improved the manner in which information is disseminated, and has led to the emergence of new licences, which are seen as a viable alternative to traditional online licensing systems.

For example, **Click-Use** is an online licensing system launched by the UK Office of Public Sector Information (OPSI) in 2001, which allows potential users to submit online requests for the re-use of crown copyright material and sign licences electronically, normally free of charge, which has proven to be quick, transparent and secure. Click-Use licences have been extremely successful, with over **15 000 licences** in operation.

Another commonly recognised open licensing model is **Creative Commons (CC)**. This comprises a set of licensing terms and conditions that allow copyright owners to grant some or all of their rights to the public while retaining some rights through a number of conditions. The ultimate purpose is to clarify ownership of the information and promote sharing of the information under licence. Whilst the original target user group of Creative Commons was producers of creative copyright material, there has been growing interest in its application to PSI.⁴⁵ Another example is the **Catalonian regional Ministry of Justice**,⁴⁶ which uses **CC licences** in its publications. CC licences have thus been of prime importance in opening up knowledge. Similarly, the **Australian Bureau of Statistics** has decided that it will also be using a creative commons licence for its statistical⁴⁷ information.

7.3. Exclusive deals/arrangements

Public sector bodies often are the only entities that produce a certain type of information and therefore have a natural monopoly on this information. This has sometimes led in the past to high charges, or to **exclusive agreements** granted to a single, or a very limited number of market players. These exclusive licences **prevent** other players from obtaining the information under similar conditions and producing added-value services based on that information. The Directive prescribes that **PSI is to be made available to all potential re-users under similar conditions**. The **Directive forbids the existence of deals of this kind and the transitional period laid down in the Directive for existing exclusive agreements ended on 31 December 2008**.

Exclusive agreements between public sector bodies and private players have been phased out in several Member States recently in application of the Directive. Examples are exclusive agreements that existed include the Dutch car register, the Latvian state registers, and the Swedish population register. In the latter case, the change was triggered by Commission action after a complaint.

⁴⁵ “Creative Commons licensing for public sector information. Opportunities and pitfalls” Mireille van Eechoud & Brenda van der Wal”.

⁴⁶ www.gencat.cat.

⁴⁷ http://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/8b2bdbc1d45a10b1ca25751d000d9b03?opendocument?utm_id=HPI.

The Directive leads to the dismantling of an information monopoly based on an exclusive agreement in Sweden

In Sweden, the PSI Directive has led to legislative amendments and the termination of an exclusive agreement regarding the State's population register. A private company managed the registry and was awarded the exclusive right to be the single entry point for providing information contained in this register – prior to the Directive. The company was able to set its own charging conditions for providing the information to third parties.

Sweden has an open and transparent policy regarding the use of public sector information, both for commercial and non-commercial purposes, together with a long tradition of data protection. An important block of the information contained in the register is provided legally to numerous public and private users. This information has great economic value for re-use since it contains tax declarations data, e.g. for credit rating, marketing, insurance and banking purposes.

The Commission received a complaint regarding the conditions for re-use of this information in the register. The change in Sweden was triggered by infringement procedures launched by the Commission.

It should also be highlighted that two Member States – the **UK**⁴⁸ and the **Netherlands**⁴⁹ – have taken early action to identify possible exclusive agreements within their public sector bodies. Both assessments **have indeed identified the existence of exclusive agreements** and their specific nature, and have reported that currently **remedy measures** are being taken to terminate these. Unfortunately, no other Member States have taken such a systematic approach to identifying and phasing out these agreements.

7.4. Public task

Public task is an important concept of the Directive. On the one hand, it defines its scope and, on the other, it sets the boundaries of the concept of re-use. The Directive does not contain a precise definition of “public tasks” as such. However, the Directive sets out some boundary conditions that this concept has to meet: the task has to be vested in a 'public sector body' within the meaning of its Article 2 and it has to be defined by law or other binding rules in the Member state concerned or, in the absence of such rules, in line with common administrative practice in the Member state in question. Activities falling outside the public task will typically include the supply of documents that are produced and charged for exclusively on a commercial basis and in competition with others in the market. The term public task is closely related to public service obligations or to services in the general economic interest used in the EC treaty and other Community rules. Public service obligations are normally defined as obligations which an undertaking would not assume, or not assume to the same extent or under the same conditions, if it were considering its own commercial interest. The ECJ has examined on a case by case basis whether certain activities can be considered to be such services on the basis of certain objective criteria, such as universality and continuity of the service, uniform tariff rates and equal terms.

⁴⁸ <http://www.opsi.gov.uk/advice/psi-regulations/exclusive-agreements>.

⁴⁹ http://www.epsiplus.net/media/files/onderzoek_exclusieve_contracten_final_2_1.

It has been reported that many public sector bodies do not have a clear statement of their own public task. The CUPI Report states, for example, that only two out of the 18 public sector bodies surveyed had a standard definition of their public task in the form of a single document. If there is no public statement or document that sets out clearly the public task of the public body concerned, it becomes more difficult to assess precisely the boundaries between such task and other downstream activities that it may carry out in competition with other re-users.

This issue is the cause of much tension between public sector holders and private re-users. As far as the latter are concerned, this creates two basic problems:

1) If a public sector body goes too far in its mainstream actions, it leaves little room for the private sector to act in the market and offer added value products or services. For example, the MICUS report highlights that the German State Survey Authorities consider the production of maps for leisure activities to be a public task and sell them at very low prices. Private German cartographic publishers indeed question whether this should be considered a “public task”.

Certain public sector bodies (such as the Austrian Mapping Agency in the case of maps for cyclists) deliberately withdraw from the market once private re-users start offering their added-value services and products. Another good example is that of the CENDOJ (Council of the Spanish Judiciary which has the task to care for the publication of case law), which concluded an agreement with legal publishers on the role of each party in the dissemination and re-use of this information. (See 7.5)

2) The second issue refers to cross-subsidies, where a public sector body would use its “raw” information to develop further value-added services under more favourable conditions than those offered to competitors.

In order to ensure fair competition and non-discrimination, as prescribed by Article 10(2) of the Directive, if public bodies re-use their own documents to produce added-value services in competition with other re-users, equal charges and other conditions should apply to all of them. A clear demarcation of what is the public sector body’s public task, and a separation of accounts for public task and market activities of public sector bodies helps to ensure this objective. This approach has been taken, for example, by the UK Met Office. Also, while Member States can define the public tasks of public sector bodies, they have to take into account certain limits and criteria set by EC law as interpreted by the ECJ.

7.5. Cooperation PSIH – Re-users

The responses to the stakeholder and Member State consultations and our bilateral contacts with stakeholders indicate that there is frequently a **mismatch** between the information **public sector bodies make available** for re-use and **the needs of private re-users**. This is an area for further cooperation on maximising re-use, as there is a need for public sector bodies to meet the real demands of private operators. Public sector bodies are interested in investing in IT system/infrastructure that provides what re-users want. Re-users underlined in the Micus Report their willingness to buy more information from public sources provided that it is delivered under reasonable conditions. In order to meet this demand, PSI holders should focus on crucial aspects such as licensing, pricing, delivery times and provide greater support for the re-use of PSI. An interesting example of this is CENDOJ.

CENDOJ

The Spanish Council of the Judiciary (CENDOJ) recently announced that it had entered into an agreement with the Spanish Federation of Legal Publishers on the publication of its jurisprudence, agreeing on the conditions of access to and re-use by Spanish publishers, in accordance with the provisions of the PSI Directive. An important aspect of this agreement is the clarification of the role of CENDOJ in the dissemination of case law in terms of fulfilling its public task mandate. This agreement is bound to give a positive impulse to the re-use business, in particular by defining the scope and boundaries of public and private markets.⁵⁰

7.6. Technological issues

PSI re-use can very much be facilitated by appropriate “**discovery**” tools that make it easy for re-users to “find” and “download” the information they require. **Information Asset Registers (IARs)** are particularly relevant, as they list the content and resources held by Public Sector Bodies and enable re-users to identify from “one stop shops” what information is held across a given country. The UK OPSI website provides an interesting example by unlocking and making available the information assets held across the UK Government. In addition, OPSI has also developed a web page where re-users can request specific datasets held by government that they would like released.

The information assets produced and held by public sector bodies vary considerably from one institution to another, and therefore the availability of a structured **metadata catalogue** of their information assets is key to enabling its **discovery and making for wider re-use**. Whilst discussions are currently taking place on the need or otherwise to establish Europe-wide metadata standards, there is an emerging consensus that IARs should be harmonised some through some **level of standardisation and interoperability**. The call for appropriate metadata and interoperability standards is not new, and this task has been undertaken by different specific communities to exchange and re-use data. For example, the World Meteorological Organisation (WMO) standards are the norm for exchanging meteorological information. The recent adoption of the INSPIRE Metadata Implementing Rules⁵¹ will become the agreed standard for exchanging and re-using geographical information in Europe.

In addition, not only should the **information** be discovered and available for re-use, it should also be delivered in such a way that it can be readily **re-used**. **For example, the Danish Government Strategy** is that **government data** should be based on **open and common XML standards** wherever possible, thus enabling private re-users to plan for specific data formats when designing their IT systems and interfaces.

The use of **Semantic Web Technologies** has been flagged as important in this context, as they allow documents to be fully **searchable and linkable**, not only providing information to users but also enabling machine to machine interaction.

⁵⁰ http://www.epsplus.net/news/psi_directive_quoted.

⁵¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:326:0012:0030:EN:PDF>.

8. OVERVIEW OF RELEVANT EUROPEAN AND INTERNATIONAL PSI-RELATED INITIATIVES

8.1. Bilateral contacts, PSI expert group

A considerable number of bilateral contacts with publishers, private firms, government agencies and commercial associations have been held to hear the views of the different stakeholders, in particular in the private sector.

PSI Alliance

The PSI Alliance is an association of private Public Sector Information re-users across the EU. It was established in January 2008. Over 15 organisations representing over 200 companies, including Bisnode, a Microsoft subsidiary, Multimap, an EADS subsidiary, Infoterra, GEOkomm, PRIMET and Lursoft have put their weight behind the new organisation. The goal of the PSI Alliance is to encourage the public and private sectors to work together effectively, to ensure that PSI can assume its proper role as a key contributor to a vibrant, information-driven European economy, offering benefits to the public sector, private sector and the end consumer alike.

Similarly formal consultations with Member States have taken place in the context of the PSI Group.⁵² This group consists of Member States officials, local or regional authorities, and representatives from private sector organisations who meet regularly to exchange good practices in PSI re-use and initiatives supporting PSI re-use and discuss practical issues regarding transposition of the PSI Directive.

8.2. Awareness-raising actions and studies under the eContentplus/CIP programmes

The Commission supports awareness rising, exchange of good practices and networking through the eContentplus programme. The “**ePSIplus Thematic Network**”⁵³ has developed a network of correspondents and national experts and brought together a large community of PSI stakeholders, raising awareness in the Member States of PSI issues and facilitating implementation of the Directive. It has a comprehensive website, which **monitors and reports on PSI-related issues**, and has held meetings across EU Member States to raise awareness of PSI re-use. In addition, 15 specific thematic meetings have taken place, covering key issues such as law and regulation, public sector culture, PSI re-use business, financial impact, information management, standards and data quality. In June 2008, it organised a Conference entitled ‘PSI Re-use – Who Takes Action Next?’, and subsequently submitted “**ePSIplus Recommendations and Supporting Evidence**” to the Commission on the review of the PSI Directive. The ePSIplus thematic network will be replaced in February 2009 by the **European Public Sector Information Platform**, which will carry on undertaking PSI awareness raising and exchange of good practices.

Effective deployment of the re-use policy by Member States will have to be accompanied by projects and support measures under the Competitiveness Innovation Programme (CIP),

⁵² http://ec.europa.eu/information_society/policy/psi/psi_group/index_en.htm.

⁵³ <http://www.epsiplus.net/>.

within the part of the CIP dealing with digital content, which will replace the eContentplus programme in 2009.⁵⁴

In 2009, **an exercise is being launched to assess the existence of exclusive agreements** concluded by public sector **bodies within EU Member States**. This will help the Commission to **investigate the existence of such arrangements** in the Member States, particularly in sectors where such practices have been the tradition.

In addition, a **thematic network on the “Legal aspects of Public Sector Information”** will be set up. The aim is to identify and discuss legal barriers to access to and re-use of PSI in the digital environment and to suggest ways of overcoming them.

8.3. Associated Community initiatives

Various institutions and stakeholders have flagged that greater cooperation between European bodies and frameworks, notably the INSPIRE Directive and the Shared Environmental Information System (SEIS) initiative, should be established by the Commission to help determine what action and initiatives are needed to improve discovery and access to the full range of PSI.

8.3.1. SEIS – Shared Environmental Information System

SEIS⁵⁵ is a collaborative initiative of the European Commission and the European Environment Agency (EEA) designed to establish, together with the Member States, an integrated and shared EU-wide environmental information system. This system would tie in with all existing data gathering and information flows relating to EU environmental policies and legislation. It will be based on technologies such as internet and satellite systems and thus **make environmental information more readily available** and easier to access and re-use.

The underlying aim of SEIS is also to move away from paper-based reporting to a system where information is managed as close as possible to its source and made available to users in an open and transparent way.

SEIS could be a considerable PSI asset: it will facilitate access to and re-use of environmental information and will boost the development of intelligent e-services by taking advantage of **data-sharing infrastructures** and readily available information.

8.3.2. INSPIRE Directive

INSPIRE⁵⁶ is a Directive (2007/2/EC) of the European Parliament and of the Council establishing an **Infrastructure for Spatial Information in the European Community**. The purpose of such an infrastructure is to assist **policy-making in relation to policies** and activities that may have a direct or indirect impact on the environment. The Directive entered into force on 15 May 2007 and must be transposed in all Member States by 15 May 2009.

To ensure that the **spatial data infrastructures** of the Member States are **compatible and usable across borders** and in a Community context, the Directive requires common Implementing Rules to be adopted in a number of specific areas. This requirement is one of

⁵⁴ http://ec.europa.eu/information_society/activities/ict_psp/index_en.htm.

⁵⁵ <http://ec.europa.eu/environment/seis/index.htm>.

⁵⁶ <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2007:108:SOM:EN:HTML>.

the provisions to help raise awareness and increase visibility of all initiatives promoting the use and re-use of data. Articles 11(1) and 15 of the **INSPIRE Directive require direct access to be given to data and services** from the Member State and from the Communities. This obligation is a big step forward towards improving the efficiency of the use of geospatial data for the purposes of cross-border business activity on a pan-European level, and it is also expected to lead to further developments in the geographical information market.

8.4. International activities (OECD)

The OECD has been looking at the opportunities stemming from the re-use of PSI in the digital age, and at the challenges involved, since 2006. The OECD Working Party on the Information Economy drew up a comprehensive report on PSI in 2006,⁵⁷ and, more recently, the **OECD Committee for Scientific and Technological Policy (CSTP) approved a Recommendation of the Council for Enhanced Access and more effective Use of Public Sector Information.**⁵⁸ These include a set of principles which in specific cases go beyond the requirements of the Directive. For example, it strongly encourages marginal cost pricing for PSI. The CSTP will have to monitor implementation of the Recommendation.

⁵⁷ <http://www.oecd.org/dataoecd/10/22/36481524.pdf>.

⁵⁸ <http://www.oecd.org/dataoecd/0/27/40826024.pdf>.

ANNEX

Directive 2003/98/EC on the Re-use of Public Sector Information – Means of transposition

I. Specific PSI Legislation	
Member State	National measures transposing the Directive
Belgium (BE)	A series of federal and regional measures transposing the PSI Directive in particular regions (2005-2008)
Cyprus (CY)	Act establishing rules governing the re-use of existing information held by public sector bodies (2006); Decree pursuant to Article 3(2) of the Law on PSI (2007)
Germany (DE)	Federal law transposing the PSI Directive – Re-use of Information Act (IWG Informationsweiterverwendungsgesetz) (2006)
Spain (ES)	Law No 37/2007 on the re-use of public sector information (2007)
Greece (GR)	Law No 3448 on the re-use of public sector information and the regulation of issues within the competency of the Ministry of Interior, Public Administration and Decentralisation (2006, amended in 2007)
Ireland (IE)	The European Communities (Re-use of Public Sector Information) Regulations (2005)
Italy (IT)	Legislative Decree No 36 of 24 January implementing Directive 2003/98 on the re-use of public sector information (2006)
Luxembourg (LU)	Law on the re-use of public sector information (2007)
Malta (MT)	European Union Act (Cap. 460) Re-use of Public Sector Information Order (2007)
Romania (RO)	Law 109/2007 regarding re-use of public institutions information (2007); Law on access to Information of Public Character (2003)
United Kingdom (UK)	The Re-use of public sector information regulations (2005)

II. Amendments to the existing legal framework

Member State	National measures transposing the Directive
Austria (AT)	A series of federal measures transposing the PSI Directive in particular <i>Länder</i> (2005-2007)
Bulgaria (BU)	Law amending Access to Public Information Act (2007)
Czech Republic (CZ)	Law amending Free Access to Information Act No 1061/999 (2006)
Denmark (DK)	Act on the re-use of public sector information No 596/24.6 (2005, amended in 2008); Public Administration Act No 571/19.12 (1985); Access to Public Administrative Documents Act No 572/19.12 (1985)
Finland (FI)	Act on Transparency in Government (1999); Act on Criteria for Charges Payable to the State (1992); Act on Sovereignty of the Island of Åland (1991)
France (FR)	Act No 78-753, as amended by Order 2005-650 of 6 June 2005, on freedom of access to administrative documents and the re-use of public information; Decree No 20051755 (2005)
Lithuania (LT)	Law on access to information from central and local government institutions (2006); Law on State Registers (2004)
Latvia (LV)	Amendments to the act on freedom of information (2006); Act on freedom of information (1998)
Netherlands (NL)	Amendment of the government information act (WOB) and a number of other acts in connection with implementation of Directive 2003/98/EC (2005); Explanatory Memorandum (attached to the above amendment)
Portugal (PT)	Law No 46/2007 transposing the PSI Directive (2007)
Sweden (SE)	Regulation on the re-use of public sector information (2008) and a series of existing legislation, including Freedom of the Press Order (1949); Fees and Charges Order (1992); Administrative Procedures Act (1986); Constitutional Act (1989)
Slovenia (SI)	Law on the re-use of public sector information (2005) and amendments to the Law on access to Information of Public Character (2005); Law on access to Information of Public Character (2003)

III. No amendments to the existing legal framework regarding transposition of the PSI Directive

Member State	National measures transposing the Directive
Estonia (EE)	The Public Information Act (consolidated text March 2003)
Hungary (HU)	A series of existing national measures, including Constitution of the Republic of Hungary (1949, amended 1989); Data Protection Act (1992, amended in 2003 and in 2005) Act on equal treatment and promoting equality of opportunity (2003); Act on freedom of electronic information (2005)
Poland (PL)	A series of existing national measures, including Act on Freedom of Business Activity (2004); Act on Access to Public Information (2001); Constitution of the Republic of Poland (1997); Code of Administrative Procedure (1960)
Slovak Republic (SK)	A series of existing legislation, including The freedom of Information Act 211/2000 (2000); Code of Administrative procedure (amended in 2002 and in 2003)

Member State of the EEA	National measures related to the PSI Directive
Iceland	Law No 161/2006 amending the information law No 50/1996
Liechtenstein	Law No 172/016 on the further use of public sector information implementing the PSI Directive (Informationsweiterverwendungsgesetz; IWG) (2008)
Norway	Act 19 May 2006 no 16 relating to right of access to documents held by the public administration and public undertakings