Information market: re-use and commercial exploitation of public sector documents. 'PSI Directive'

2002/0123(COD) - 07/05/2009 - Follow-up document

This Communication reviews the application of Directive 2003/98/EC concerning the reuse of public sector information.

The PSI Directive regulates non-discrimination, charging, exclusive arrangements, transparency, licensing and practical tools to make it easy to find and re-use public documents.

The value of the EU PSI market is estimated at EUR 27 billion, which is four times the EU market for mobile roaming services.

The PSI Directive was implemented by many MS with considerable delay. The prohibition of exclusive arrangements only became fully applicable as from 1.1.2009. Therefore, the Directive in its present form has not yet had its full impact.

For this reason **the Commission does not intend to propose amendments to the Directive at this point**. The Commission will **carry out a further review at the latest in 2012** when more evidence on the impact, effects and application of the Directive should be available and will communicate the results to the European Parliament and to the Council. **Legislative amendments will be considered at that stage** if the potential of re-use is still being hampered.

In the meantime, there is **much room for improvement in the way Member States deal with their PSI resources in the market**.

The Commission draws attention to the following areas in particular:

The Commission discusses the following points in the paper:

- **full implementation and application of the PSI Directive**. The Commission has opened 18 infringement cases against Member States and the European Court of Justice has delivered 4 judgments for failure to implement the Directive. Member States have also implemented the Directive in different ways;
- **terminating exclusive arrangements**. The Commission notes evidence of exclusive arrangements still in force in Member States. It will scrutinise observance of this obligation and launch an investigation on the extent of such arrangements in 2009;
- **charging:** the report notes that continuous analysis of the economic case for marginal costs is a Commission priority for the future;
- **facilitating re-use**: public sector bodies should ensure that documents that are re-usable (i.e. accessible for any use beyond the initial public tasks for which they were originally produced) can be re-used for commercial or non-commercial purposes;
- **ensuring fair competition between public sector bodies and re-users**: in some cases the line between the public tasks and market activities of public sector bodies is not clearly demarcated. There are also cases where public tasks are defined in such a way that they cover a very wide range of activities and occupy almost the whole market of added-value PSI services. These situations can easily lead to cross-subsidies, where a public sector body uses its “raw” information for further

value-added services under more favourable conditions than those offered to competitors. It is very difficult for private re-users to compete with public sector bodies in such circumstances;
- **conflict resolution**: the Commission encourages Member States to set up PSI complaint mechanisms.

The Commission concludes that **progress and implementation of the Directive is uneven**. Barriers include attempts by public sector bodies to maximise cost recovery, as opposed to benefits for the wider economy, competition between the public and the private sector, practical issues hindering re-use, such as the lack of information on available PSI, and the mindset of public sector bodies failing to realise the economic potential.

Member States need to focus their efforts now on: (i) full and correct implementation of the Directive, (ii) terminating exclusive arrangements, (iii) applying licensing and charging models that facilitate the availability and re-use of PSI, ensuring equal conditions for public bodies re-using their own documents and other re-users, (iv) promoting quick and inexpensive conflict resolution mechanisms.